

U.S. Policy Towards Burma: Issues for the 113th Congress

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Summary

U.S. policy towards Burma has undergone a discernible shift in its approach since a quasi-civilian government was established in March 2011. While the overall objectives of U.S. policy towards the country remain in place—the establishment of civilian democratic government based on the rule of law and the protection of basic human rights—the Obama Administration has moved from a more reactive, “action-for-action” strategy and a skeptical and cautious attitude towards the newly created Union Government and Union Parliament to a more proactive mode. The new approach is designed to foster further reforms based on some form of partnership with the Union Government, headed by President Thein Sein.

During the last two years, the Obama Administration has conducted much of its policy towards Burma using existing constitutional and legal authority, while regularly consulting with Congress about the actions taken. The 112th Congress passed five laws containing provisions related to U.S. policy in Burma. Three laws—P.L. 112-33, P.L. 112-36, and P.L. 112-163—extended the general import ban contained in Section 3 of the Burmese Freedom and Democracy Act of 2003 (2003 BFDA, P.L. 108-61) which is subject to annual renewal. P.L. 112-74 placed restrictions on the use in Burma of appropriated funds for certain Defense and State Department programs. P.L. 112-192 granted the Secretary of the Treasury the option of instructing the U.S. Executive Director at any international financial institution to “vote in favor of the provision of assistance for Burma by the institution, notwithstanding any other provision of law” if the President has determined that to do so is in the national interest of the United States. The 113th Congress will have the opportunity to decide what role it will play in the future course of U.S. policy in Burma.

The Administration’s Burma policy in 2011 and 2012 may be characterized as the combination of increasing engagement with Burma’s Union Government, Union Parliament, and selected opposition groups, and the waiving or easing of many of the existing economic sanctions imposed on Burma by various laws, including the 2003 BFDA and the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (P.L. 110-286). However, the Administration may decide that it is approaching the limit of actions it can take with regard to easing of sanctions without Congress passing new legislation.

Some critics of the Obama Administration say that it has moved too fast and too far in easing the existing sanctions, given the continued reports of serious human rights violations and significant restrictions on civil liberties. Other critics think the Administration has moved too slowly and cautiously in waiving sanctions, hindering the reform process in Burma and blocking greater U.S. participation in Burma’s economic development.

Certain key issues with regard to Burma’s political situation may be important to the future course of U.S. policy in Burma. First, President Thein Sein’s vision for Burma’s “disciplined democracy” has not been clearly elaborated, and his commitment to further reforms remains untested. Second, the view of Burma’s military leadership on political reforms is uncertain. Third, the path for possible reconciliation between the country’s Burman majority and various ethnic minorities is unclear.

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Overview

During the preceding two decades, Congress played an active and at times leading role in setting U.S. policy towards Burma.¹ Since Burma's ruling military junta, the State Peace and Development Council (SPDC), transferred power to a quasi-civilian government in March 2011, Congress has been largely deferential to the decisions of the White House, the Department of State, and the Department of the Treasury on the conduct of U.S. policy towards Burma. With a few important exceptions, adjustments in U.S. policy towards Burma over the last two years have been done using executive authority granted by the U.S. Constitution or existing legislation. The Obama Administration has consulted regularly with the congressional committees with jurisdiction, as well as with key Members of Congress, as it made changes in bilateral relations. However, the Obama Administration has used much of its discretionary authority and may require direct congressional action to implement additional changes in U.S. policy towards Burma. In addition, Congress may determine it is time to reassess the situation in Burma and to resume its more active role in the determination of U.S. policy towards this politically dynamic country.

The Obama Administration has ushered in a new approach to U.S. relations with Burma (Myanmar).² On September 28, 2009, the State Department announced a change in U.S. policy towards Burma after seven months of review, discussion, and consultation.³ The existing sanctions regime would remain in place, but new elements of U.S. policy were added. First, the Administration announced its willingness to engage in direct dialogue with Burma's ruling military junta, the State Peace and Development Council (SPDC), on how to promote democracy and human rights in Burma. Second, it sought to cooperate to a greater extent with the SPDC on international security issues, such as nuclear nonproliferation and counternarcotics efforts.

The Obama policy would also continue to pursue the same goals of the two preceding administrations—namely, to support “a unified, peaceful, prosperous, and democratic Burma that respects the human rights of its citizens.”⁴ In order to achieve these goals, the Obama Administration would press Burma's military leaders to release all its political prisoners, end all its conflicts with ethnic minorities, cease its human rights violations, and initiate “a credible internal political dialogue with the democratic opposition and ethnic minority leaders on elements of reconciliation and reform.”⁵ It would also call for Burma to sever its political and military ties to North Korea and abandon its alleged nuclear weapons program. In addition, the Obama Administration would continue to communicate with other nations and coordinate their respective policies towards Burma.

The months following the announcement of a new U.S. policy towards Burma would see the nation undergo a dramatic political transformation.⁶ The SPDC called for and held parliamentary elections in November 2010, the first such elections in 20 years. A few days after the election,

¹ For a discussion of the role of Congress in the formulation of U.S. policy towards Burma during the 1990s, see CRS Report R41971, *U.S. Policy Towards Burma: Issues for the 112th Congress*, by Michael F. Martin and Derek E. Mix.

² The U.S. government continues to refer to the country as “Burma.” Under the 2008 Constitution, the nation's official name is “The Republic of the Union of Myanmar.” The United Nations, most multilateral organizations, and most nations have adopted the name, “Myanmar.” Inside the country, there is an ongoing political debate over the country's name. Aung San Suu Kyi and many of the traditional pro-democracy opposition organizations prefer to use “Burma.”

³ U.S. Department of State, “U.S. Policy Toward Burma,” press release, September 28, 2009.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ For a chronological listing of major events in Burma and developments in U.S. policy, see Appendix B.

opposition leader Aung San Suu Kyi was released from house arrest. While the conduct of the elections was far from free and fair by international standards, the SPDC abided by the results of those elections. On March 30, 2011, the SPDC transferred power to a quasi-civilian government (most of the leaders are ex-generals and one-quarter of the members of the parliament are military officers) under the provisions of a new constitution largely written by the SPDC and purportedly approved by a public plebiscite in 2008.⁷

Since assuming power, Burma's quasi-civilian government, led by President Thein Sein—ex-general in the Burmese military and the SPDC's last prime minister—has undertaken a number of political and economic reforms that many see as encouraging signs. Hundreds of political prisoners have been released from detention and a few of Burma's more oppressive laws have been repealed or amended by Burma's Union Parliament. In April 2012, Burma held parliamentary by-elections in which Nobel Peace Prize recipient Aung San Suu Kyi and her political party, the National League for Democracy (NLD), won 43 of the 46 seats. While the conduct of the by-elections was still flawed, the acceptance of the results by the Thein Sein administration and the Burmese military was generally seen as a positive political development.

Over the last two years, the Obama Administration has responded to such promising developments in Burma by enhancing and increasing high-level meetings with the Thein Sein government and selectively easing many of the existing sanctions on Burma. Since adopting the new Burma policy, the first U.S. ambassador to Burma in 20 years has been appointed, Hillary Clinton became the first Secretary of State in over 50 years to visit Burma, and President Obama subsequently became the first U.S. President to visit Burma while in office. Many of the specific sanctions on Burma—including the general ban on importing Burmese goods, the ban on new investments in Burma, and the restrictions on the provision of financial services to Burma—have been waived using presidential authority provided by the laws imposing sanctions on Burma. Plans are underway to increase U.S. assistance to Burma, including the reopening of the U.S. Agency for International Development (USAID) mission in Burma after a 23-year hiatus.

Even with the various changes that have taken place in Burma since the quasi-civilian government took power, the political and economic situation in the country remains serious, and the reforms are generally viewed as fragile and reversible. Despite ongoing negotiations and the signing of 12 preliminary ceasefire agreements, fighting between the Burmese military, or Tatmadaw, and various ethnic-based militias continues across the country. Fighting is particularly serious in the Kachin State, with regular reports of the Tatmadaw committing serious human rights violations against civilians in conflict areas. Rioting in Rakhine State in western Burma has uncovered festering ethnic tensions in the country. While the Union Parliament has passed some laws providing better protection of civil liberties, many of the country's more oppressive laws (including a few dating back to British colonial rule) remain on the books. The NLD was able to register and compete in the April 2012 by-elections, but several other political parties have not been allowed to register or refuse to register because some of their members remain in detention for political reasons. In spite of multiple prisoner releases since May 2011, over 200 political prisoners are being held in Burma's prisons.⁸

⁷ The results of the national constitutional referendum were roundly condemned as being fraudulent. For more about the 2008 constitutional plebiscite, see CRS Report RL34481, *Cyclone Nargis and Burma's Constitutional Referendum*, by Michael F. Martin and Rhoda Margesson. For more information on the 2010 parliamentary elections in Burma, see CRS Report R41971, *U.S. Policy Towards Burma: Issues for the 112th Congress*, by Michael F. Martin and Derek E. Mix.

⁸ The number and definition of who should be considered a political prisoner in Burma is the subject of political debate. According to the Assistance Association for Political Prisoners (Burma), or AAPP(B), 222 political prisoners remained

The 113th Congress may choose to consider a number of different issues raised by the Obama Administration's Burma policy, as well as Burma's political and economic development, including:

- Is President Thein Sein's government committed to democracy and the protection of human rights in Burma, and does it have the ability to continue to implement reforms? Will it be able to work with the Union Parliament and the Burmese military to promote political and economic reform?
- Is U.S. policy too closely tied to President Thein Sein's government, opposition leader Aung San Suu Kyi, and the NLD to the neglect of developing relations with Burma's ethnic minorities and their representative organizations?
- What can the United States do to encourage progress in the ongoing negotiations between the Burmese government and the various ethnic-based organizations?
- Has the Obama Administration moved too quickly or too slowly in its easing of sanctions? What would have to occur in Burma in order for the sanctions to be removed or the waivers reversed?
- Are the current sanctions on Burma being fully and properly enforced in accordance with the law?
- What types of aid or assistance should the United States provide to support Burma?
- How does U.S. policy towards Burma fit with the Obama Administration's rebalancing to the Asia-Pacific region and its objectives in Southeast Asia?
- What role does Burma play in the geopolitical dynamic between China and India and relations within Southeast Asia?

The Evolution of Obama's Burma Policy

Many observers trace the origins of the Obama Administration's Burma policy to a 2007 article in *Foreign Affairs*, co-authored by Michael Green and Derek Mitchell.⁹ In their article, Green and Mitchell stated that U.S. policy towards Burma at the time was "stuck," and wrote that a change in approach was necessary to press Burma's ruling military junta to undertake political and economic reforms. The changes recommended by Green and Mitchell in their article are very similar to those announced by the State Department in September 2009—direct engagement with the country's military regime and the continuation of sanctions.

While the conceptual basis of Obama's Burma policy may have been set, the Obama Administration's attitude and approach towards Burma has seemingly evolved over time. Initially, the White House and the key figures in handling U.S. relations with Burma expressed some skepticism and reservations about the quasi-civilian Union Government, its leadership, and the prospects for significant political and economic reform. The Obama Administration also appeared to keep President Thein Sein's administration at arm's length, and made efforts to balance relations with the new government with contact with Aung San Suu Kyi, other opposition parties, and representatives of ethnic groups.

in detention as of January 8, 2013. For more information on the political prisoner issue in Burma, see CRS Report R42363, *Burma's Political Prisoners and U.S. Sanctions*, by Michael F. Martin.

⁹ Michael Green and Derek Mitchell, "Asia's Forgotten Crisis: A New Approach to Burma," *Foreign Affairs*, vol. 86, no. 1 (January/February 2007), pp. 147-158.

Over time, and in response to various actions by the Burmese government, the Obama Administration's assessment of President Thein Sein and his government became more optimistic, and ties between the two governments became closer—possibly, in the view of some experts, at the expense of relations with Burma's opposition parties and ethnic groups. After the NLD agreed to participate in parliamentary by-elections in April 2012, U.S. policy shifted to a focus on promoting perceived progressive forces within the Thein Sein government and isolating individuals and organizations considered anti-reform. U.S. officials now speak of a partnership with President Thein Sein's government. For example, following his meeting with President Thein Sein in Rangoon, President Obama said, "we will continue to work with [you] as the partner with the United States."¹⁰ As a consequence, U.S. relations with the traditional opposition parties and ethnic organizations may have suffered.

In addition to the apparent closer realignment of the United States towards President Thein Sein and the Union Government, the Obama Administration also switched from an approach of responding to positive developments in Burma with graduated relaxation of sanctions—often referred to as an "action for action" approach—to one that attempts to foster or promote further reforms. Whereas in the past senior U.S. officials spoke of the need for Burma to demonstrate that conditions have improved enough to warrant the waving of sanctions, more recent statements from the Obama Administration have focused on creating an environment in Burma where more reforms can occur.

These two shifts in the Obama Administration's Burma policy—reliance on the Thein Sein government and trying to get out in front of Burma's reforms—have become a matter of some debate among Burma experts and various interest groups. Some observers are concerned that the Obama Administration has moved too fast and too far in rewarding comparatively modest progress towards the attainment of U.S. goals in Burma. Other observers think that the White House has been too slow and too cautious in its actions, and worry that the sanctions that remain in effect are hindering reforms in Burma, placing the United States at a disadvantage in influencing political and economic developments there.

U.S. Policy Towards the SPDC

Following its announcement of a new Burma policy, the Obama Administration held several direct discussions with SPDC officials.¹¹ On November 15, 2009, both President Obama and then Prime Minister General Thein Sein attended the first ASEAN-U.S. leaders meeting in Singapore.¹²

Although it held a series of high-level meetings with the SPDC, the Obama Administration made it clear that the existing U.S. sanctions on Burma would remain in place "until we see concrete

¹⁰ White House, "Remarks by President Obama and President Thein Sein of Burma after Bilateral Meeting," press release, November 19, 2012.

¹¹ A few days prior to the ASEAN-U.S. leaders meeting, then Assistant Secretary Kurt Campbell and then Deputy Assistant Secretary Scott Marciel traveled to Burma to meet with Prime Minister Thein Sein—the highest level U.S. delegation to visit Burma in 14 years. Campbell and Marciel also met with Aung San Suu Kyi and leaders of other opposition parties and ethnic minorities. Assistant Secretary Campbell returned to Burma on May 9-10, 2010, and had meetings with SPDC officials, NLD leaders (including Aung San Suu Kyi), and leaders from various ethnic minority groups. In December 2010, Deputy Assistant Secretary Joseph (Joe) Yun traveled to Burma where he met with SPDC officials, Aung San Suu Kyi and other NLD leaders, and representatives of various ethnic minority groups.

¹² U.S. engagement with the SPDC also enabled closer U.S. ties with ASEAN, including the ASEAN-U.S. leaders meeting. President George W. Bush has suggested a U.S.-ASEAN leaders meeting be held in Texas, but the event failed to occur in part because of the question of inviting SPDC Prime Minister Thein Sein.

progress towards reform.”¹³ The Obama Administration also reserved the right to implement or recommend additional, targeted sanctions if warranted by circumstances inside Burma. Alternatively, the Obama Administration stated it might relax sanctions or call for the removal of sanctions if the political situation in Burma meets the specified criteria set in existing U.S. law.

The comments by the Obama Administration may have been partially based on the tense political situation in Burma in 2010. The NLD and several other pro-democracy parties had decided not to participate in the November elections because of what they considered unfair and restrictive election laws; several ethnic parties either were prohibited from participating in the election or chose not to participate because some of their members were detained in prison.¹⁴ The SPDC, meanwhile, transformed the Union Solidarity and Development Association (USDA), a civil organization created by the SPDC in 1993 to support the policies and activities of the Burmese military, into a political party, the Union Solidarity and Development Party (USDP), with SPDC Prime Minister Thein Sein as its leader.

In addition, the SPDC announced that in accord with the new constitution, all the ethnic militias would be transformed into Border Guard Forces (BGF) under the command of the Burmese military or face the possible abrogation of the existing ceasefire agreements and the resumption of hostilities. In August 2009, the refusal of the Myanmar National Democratic Alliance Army operating in the Kokang region of northern Shan State to join the BGF resulted in a military offensive which led to more than 30,000 refugees fleeing over the border to China. On November 11, 2010, fighting broke out between the Burmese military and the Shan State Army-North (SSA-N), which had also rejected its transformation into a BGF. Over the next few months, conflicts between the Burmese military and several other ethnic militias erupted across much of eastern Burma.

Another potential source of the Obama Administration’s cautious response to Burma’s political transition may have been reports about Burma’s alleged nuclear weapons program and arms trade with North Korea. In 2009, U.S. naval vessels monitored a cargo ship allegedly carrying arms and weapons materials from North Korea to Burma in violation of U.N. Security Council Resolution 1874. The Institute for Science and International Security (ISIS) released a report in January 2010 warning that sufficient evidence existed that Burma was exploring the development of nuclear weapons.¹⁵ In June 2010, *Al Jazeera* aired a special report, “Burma’s Nuclear Ambitions,” that claimed that the SPDC had an active program to develop nuclear weapons, and was receiving technical support from North Korea. Although many experts doubt Burma’s technical ability to develop a nuclear weapons program, the apparent continuation of arms trade prohibited by U.N. Security Council Resolution 1874 was a major concern for the Obama Administration.

The Obama Administration responded to the SPDC’s transition to the installation of the quasi-civilian government with cautious encouragement and carefully worded criticism. For example, following the parliamentary elections in November 2010, President Obama issued the following statement:

The November 7 elections in Burma were neither free nor fair, and failed to meet any of the internationally accepted standards associated with legitimate elections. The elections

¹³ U.S. Department of State, “U.S. Policy Toward Burma,” press release, September 28, 2010.

¹⁴ For more about the conduct of the November 2010 parliamentary elections, see CRS Report R41447, *Burma’s 2010 Election Campaign: Issues for Congress*, by Michael F. Martin; and CRS Report R41218, *Burma’s 2010 Elections: Implications of the New Constitution and Election Laws*, by Michael F. Martin.

¹⁵ David Albright, Paul Brannan, and Robert Kelley, et al., *Burma: A Nuclear Wannabe; Suspicious Links to North Korea; High-Tech Procurements and Enigmatic Facilities*, Institute for Science and International Security, Washington, DC, January 28, 2010.

were based on a fundamentally flawed process and demonstrated the regime's continued preference for repression and restriction over inclusion and transparency.

One of the starkest flaws of this exercise was the regime's continued detention of more than 2,100 political prisoners, including Aung San Suu Kyi, thereby denying them any opportunity to participate in the process. The unfair electoral laws and overtly partisan Election Commission ensured that Burma's leading pro-democracy party, the National League for Democracy, was silenced and sidelined. The regime denied the registration of certain ethnic parties, cancelled elections in numerous ethnic areas, and stage-managed the campaign process to ensure that pro-democracy and opposition candidates who did compete faced insurmountable obstacles.

The United States will continue to implement a strategy of pressure and engagement in accordance with conditions on the ground in Burma and the actions of the Burmese authorities. We renew our calls for the authorities to: free Aung San Suu Kyi and all other political prisoners immediately and unconditionally, cease systematic violations of human rights, begin to hold human rights violators accountable, and welcome pro-democracy and ethnic minority groups into a long-overdue dialogue.¹⁶

Following the transfer of power on March 30, 2011, Acting Deputy Department Spokesman Mark C. Toner expressed similar reservations about the situation in Burma at the daily press briefing:

[I]t was a fundamentally flawed electoral process that's now ensured the key military regime figures have continued to dominate the government and all decision making. The fact that they've taken off their uniforms and donned civilian clothes is immaterial.... We urge Burmese authorities to release all political prisoners, to recognize the legitimacy of the National League for Democracy and all democratic and ethnic opposition political parties, and to enter into a genuine and inclusive dialogue with these groups as a first step towards reconciliation to take place.¹⁷

The cautious approach to Burma continued for the first few months after the establishment of the Thein Sein administration and the convening of Burma's Union Parliament.

"Flickers of Progress" and Clinton's Trip to Burma

As Burma underwent its political transition, steps were being taken in Washington to respond to any significant developments in Burma. Derek Mitchell, co-author of the 2007 *Foreign Affairs* article, was confirmed by the Senate on August 2, 2011, as the first Special Representative and Policy Coordinator for Burma. Mitchell was nominated for the position on April 15, 2011. The position, which holds an ambassadorial ranking, was created by the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act) (P.L. 110-286) and had remained unfilled for over three years.¹⁸ According to the JADE Act, the Special Representative is responsible for coordinating U.S. policy towards Burma, consulting with foreign governments on relations with Burma, and consulting with Congress on U.S. policy towards Burma.¹⁹

¹⁶ Office of the Press Secretary, The White House, "Statement by President Obama on Burma's November 7 Elections," press statement, November 7, 2010.

¹⁷ Department of State, daily press briefing, March 30, 2011.

¹⁸ Mitchell's co-author, Michael Green, had been nominated for the position on November 10, 2008, but the Senate did not take up the issue before the end of the 110th Congress.

¹⁹ Ambassador Mitchell joined former Assistant Secretary of State for East Asian and Pacific Affairs Kurt Campbell, Deputy Assistant Secretary of State for East Asian and the Pacific Affairs Joseph Yun, and former Deputy Assistant Secretary of State for East Asian and the Pacific Affairs and current Ambassador to Indonesia Scot Marciel as the principal agents of the Obama Administration's Burma policy at the time.

The first few months in power for Burma's new government saw a mixture of encouraging and discouraging developments. Presidential Order No. 28/2011, issued on May 16, 2011, commuted all death sentences to life in prison, and reduced all other sentences by one year in duration, resulting in the release of 14,578 people—including 55 political prisoners—from prison. President Thein Sein also made overtures to Aung San Suu Kyi, the NLD, and representatives of some of ethnic organizations about possible paths towards political reconciliation. However, 10 days later, USS *McCampbell*, a Navy destroyer, intercepted a Belize-flagged cargo ship reportedly in transit between North Korea and Burma under suspicion that its cargo contained banned weapons technology. The ship's North Korean crew reportedly refused to be boarded and the ship sailed back to North Korea. On June 9, 2011, the Burmese Army broke a 17-year-old ceasefire with the Kachin Independence Army (KIA), attacking a KIA position along the Taping River. As a result, fighting between the Tatmadaw and Burma's ethnic militias spread from eastern to northern Burma.

In a speech given on May 31, 2011, at the Center for Strategic and International Studies, former Assistant Secretary Campbell succinctly summarized the Obama Administration's impressions of the new Burmese government at that time, saying, "I think it would be fair to say, to date we have been generally disappointed and underwhelmed by the progress that we have seen."²⁰ In his testimony before the House Committee on Foreign Affairs on June 2, 2011, Deputy Assistant Secretary Yun provided a similar assessment of the new Burmese government:

The convening of [Burma's] Parliament and the formation of a so-called "civilian" government marked the completion of what the [SPDC] regime refers to as its seven-step roadmap to a "disciplined and flourishing democracy." We strongly disagree with this assessment and believe many questions remain.... With former [SPDC] officials occupying most key positions in all branches of government, the United States is not optimistic that we will see any immediate change in policies or progress on our core concerns.²¹

On September 7, 2011, Ambassador Mitchell made his first trip to Burma as Special Representative, and held meetings with President Thein Sein, Aung San Suu Kyi, and NLD leaders, and representatives of Burma's ethnic groups. Just prior to Ambassador Mitchell's arrival, President Thein Sein announced his willingness to negotiate ceasefire agreements with Burma's various ethnic militias. In a press conference following his trip, Ambassador Mitchell described his conversations in Burma as candid, and indicated that he had reiterated U.S. concerns about ongoing human rights abuses (including the continued detention of political prisoners), the continuing conflicts between the Burmese military and some of the ethnic militias, and Burma's relations with North Korea. The announcement by President Thein Sein and Ambassador Mitchell's visit were viewed by some observers as setting the stage for future developments in bilateral relations. They also facilitated the U.S. visit of Foreign Minister Wunna Maung Lwin in late September 2011.

On October 11, 2011, President Thein Sein announced the second large-scale prisoner pardon, this time involving the release of 6,359 people, including 241 political prisoners. Ambassador Mitchell and Assistant Secretary for Democracy, Human Rights and Labor Michael Posner travelled to Burma on November 1-2, 2011, to discuss prospects for political reform, the ongoing fighting with the ethnic militias and the status of the ceasefire talks, and the human rights situation in general. President Thein Sein signed the Law Relating to Peaceful Assembly and

²⁰ "U.S. Engagement in Southeast Asia," speech given by former Assistant Secretary of State for East Asian and Pacific Affairs Kurt M. Campbell, Center for Strategic and International Studies, May 31, 2011.

²¹ "Block Burmese JADE Act and Recent Policy Developments," testimony of Deputy Assistant Secretary of State Joseph Yun, House Committee on Foreign Affairs, June 2, 2011.

Peaceful Procession on December 2, 2011, which allows Burmese residents to hold protests, subject to the approval of local authorities.

While attending the East Asia Summit in Bali, Indonesia, President Obama released a statement on Burma on November 18, 2011, in which he reiterated U.S. concerns about “the denial of basic human rights for the Burmese people.”²² He continued, however, by saying, “Yet after years of darkness, we’ve seen flickers of progress in these last several weeks.” In response, and after consultation with Aung San Suu Kyi, President Obama went on to announce that he had asked Clinton to go to Burma to “explore whether the United States can empower a positive transition in Burma and begin a new chapter between our countries.”

Clinton traveled to Burma from November 30 to December 2, 2011—the first Secretary of State to visit Burma since John Foster Dulles visited in 1955. During her visit to Burma, she announced that the United States would consider the exchange of ambassadors and would introduce several new U.S. development programs including an English language program, aid to victims of Burma’s internal conflict (especially land mine victims), and academic exchange programs. In a separate announcement, USAID said that it intended to expand an existing \$24 million anti-malaria program into Burma.²³ All of the initiatives announced by former Secretary Clinton during her visit were permissible under the U.S. sanction regime in force at that time.

During the summer and autumn of 2011, the Burmese government made some headway in implementing political reforms and negotiating ceasefire agreements. The Union Parliament passed a few laws that improved the legal protection of civil liberties, most notably the Labour Organization Law (allowing the formation of labor unions and legalizing worker strikes) and the Law Relating to Peaceful Assembly and Peaceful Procession (allowing for public protests under certain conditions). In August, President Thein Sein ended pre-publication censorship for publications about entertainment, sports, technology, health and children’s issues, but kept in place post-publication censorship and penalties.²⁴ On September 5, 2011, President Thein Sein appointed the 15 members of the Myanmar National Human Rights Commission (MNHRC) with the purpose of “promoting and safeguarding fundamental rights of citizens described in the constitution of the Republic of the Union on Myanmar.”²⁵

Although the fighting between the Tatmadaw and the KIA in the Kachin State continued unabated, ceasefire talks headed by then Railway Minister Aung Min made some progress with the signing of preliminary agreements with several ethnic groups, including Democratic Karen Benevolent Army (DKBA), the Mongla (a.k.a. National Democratic Alliance Army, NDAA), the Restorative Council of Shan State (RCSS, a.k.a. the Shan State Army-South, or SSA-S), and the United States Wa Army (USWA). President Thein Sein also announced two more prisoner pardons—one on January 2, 2012, in which 6,656 prisoners, including 34 political prisoners, were released; and another on January 13, 2012, in which 651 prisoners, including 302 political prisoners, were freed from detention.

On February 3, 2012, President Obama issued a presidential memorandum waiving Section 110(d)(1)(B) of the Trafficking Victims Protection Act (TVPA) with respect to Burma.²⁶ The law

²² Office of the Press Secretary, The White House, “Statement by President Obama on Burma,” press release, November 18, 2011.

²³ “USAID Project to Expand to Myanmar,” *Myanmar Times*, December 5-11, 2011.

²⁴ For example, a journal was apparently punished in September 2011 for printing a photo of Aung San Suu Kyi and an accompanying interview.

²⁵ “Myanmar National Human Rights Commission Formed,” *New Light of Myanmar*, September 6, 2011.

²⁶ Office of the Press Secretary, “Presidential Memorandum—Delegation of Authority Pursuant to Sections 110(d)4 and 110(f) of the Trafficking Victims Protection Act of 2000, as Amended,” February 3, 2012.

requires the U.S. executive directors of international financial institutions to vote against “and use the Executive Director’s best efforts” to deny non-trade, non-humanitarian loans or other use of funds to Burma through multilateral development banks (MDBs) and the International Monetary Fund (IMF). While Section 5 of the Burmese Freedom and Democracy Act of 2003 still required the U.S. executive directors of the IMF and MDBs “to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma,” the Obama Administration maintained that the presidential waiver of the TVPA provision partially opened the door for the IMF and MDBs to provide additional technical support to Burma.

Responding to the April 2012 By-Elections

On April 1, 2012, Burma held a parliamentary by-election to fill 45 vacant seats across much of the country.²⁷ The by-election garnered national and international interest not because of its potential influence on the balance of power within the Union Parliament, but because of the decision by pro-democracy opposition leader Aung San Suu Kyi and other National League for Democracy (NLD) members to run as candidates. The NLD had refused to run in the November 2010 elections because it considered the election laws overly restrictive.²⁸ Although an improvement over the November 2010 parliamentary elections, the April by-elections by most assessments did not achieve the four standards set forth by United Nations Special Rapporteur Tomás Quintana—free, fair, transparent, and inclusive.²⁹ Nonetheless, according to the official results announced by the Union Election Commission, Aung San Suu Kyi and 42 of her fellow NLD candidates won, with the 2 remaining seats going to a candidate from the pro-military Union Solidarity and Development Party (USDP) and a candidate from the Shan Nationalities Democratic Party (SNDP).

The Obama Administration issued a statement on April 1, congratulating “the people of Burma on their participation in the electoral process, and Aung San Suu Kyi and the National League for Democracy on their strong showing in the polls.”³⁰ Australia, Canada, and the European Union (EU) issued similar statements and a few weeks later removed most of their sanctions on Burma.³¹

A more detailed response from the Obama Administration came two days later, after the official results had been released. On April 4, 2012, former Secretary Clinton announced that the United States would undertake five steps to support and foster reforms in Burma “in light of the by-elections and other progress in recent months.”³² All five steps were to be taken using existing

²⁷ For more information about the parliamentary by-elections, see CRS Report R42438, *Burma’s April Parliamentary By-Elections*, by Michael F. Martin.

²⁸ For more about the NLD’s decision to not participate in the November 2010 elections, see CRS Report R41218, *Burma’s 2010 Elections: Implications of the New Constitution and Election Laws*, by Michael F. Martin, and CRS Report R41447, *Burma’s 2010 Election Campaign: Issues for Congress*, by Michael F. Martin.

²⁹ Special Rapporteur Quintana included the four standards in his most recent progress report to the United Nations Human Rights Council (United Nations Human Rights Council, *Progress Report of the Special Rapporteur of the Situation of Human Rights in Myanmar*, Tomás Ojea Quintana, A/HRC/19/67, March 7, 2012).

³⁰ Office of the Press Secretary, White House, “Statement by the Press Secretary on the Elections in Burma,” press release, April 2, 2012.

³¹ Australia lifted its travel and financial restrictions on more than 260 Burmese nationals, but kept such restrictions on 130 people and retained its arms embargo on Burma. Canada lifted its economic sanctions, but continues its arms embargo. The EU suspended its sanctions on Burma for one year, except for its arms embargo.

³² Secretary of State, “Recognizing and Supporting Burma’s Democratic Reforms,” press release, April 4, 2012. The five steps were (1) Seeking an agreement with Burma on the exchange of fully accredited ambassadors. Subsequently, Derek Mitchell, previously Special Representative and Policy Coordinator for Burma, was nominated and confirmed as

executive authority granted by the U.S. constitution and relevant federal laws, including the major Burmese sanctions laws. According to former Secretary Clinton, these five steps were chosen following consultation with Congress, “as well as our allies and friends in Europe and Asia.”³³

In a separate background briefing organized by the State Department on the same day as former Secretary Clinton’s announcement, two unnamed senior Administration officials provided additional information about the five steps.³⁴ Regarding relaxing restrictions on private U.S. organizations providing nonprofit activities in Burma, the officials said that the State Department was working with the Department of Treasury’s Office of Foreign Assets Control (OFAC) to create an “expanded general license” to facilitate the approval of such activities. OFAC approved this new general license on April 17, 2012, authorizing the exportation and reexportation of financial services to Burma for six types of not-for-profit projects.³⁵ With respect to the easing of trade and investment restrictions, the officials indicated that the intent is to identify areas that will have an “immediate impact on the livelihood of the people in the country” and will reduce impediments to the reform process. When asked to identify economic areas that may be chosen for the easing of trade and investment restrictions, the officials specifically mentioned agriculture, banking, tourism, and possibly telecommunications. They also stated that the United States would have to be very careful regarding activities in “more regressive sectors,” such as gems, timber, and activities in ethnic minority areas where there is a history of the Burmese government approving projects opposed by the local population.

In terms of the method of implementing the five steps, the officials said that the plan is to use existing waiver authorities and/or to rescind executive orders, and that there was “no plan at the current time to ask [Congress] to get rid of anything legislative.”³⁶ Some of the announced steps—in particular, the establishment of a USAID mission in Burma, U.S. support for UNDP projects in Burma, the relaxation of restrictions on nonprofit activities in Burma by private entities, and the facilitation of travel by selected Burmese officials—require the explicit invoking of presidential waiver authority in existing sanction laws, as well as the delivery to Congress of a presidential determination and certification stipulating that the situation meets the waiver provisions in existing sanction laws.

U.S. Ambassador to Burma and Mitchell’s deputy, W. Patrick Murphy, was appointed acting Special Representative; (2) Establishing an in-country USAID mission and supporting a normal country program for the United Nations Development Program (UNDP). USAID activities for Burma had been administered by the regional mission in Bangkok, Thailand. For a number of years, the United States has restricted UNDP activities in Burma to prevent any funds benefiting the Burmese government, including local officials; (3) Relaxing restrictions on private U.S. organizations providing nonprofit activities in Burma designed to promote democracy, provide healthcare, or offer education; (4) Facilitating travel to the United States for selected pro-reform Burmese officials; and (5) Beginning the process of a targeted easing of the ban on the export of U.S. financial services and investment as part of a broader effort to help accelerate economic modernization and political reforms.

³³ Ibid.

³⁴ State Department, “Background Briefing on Burma,” press release, April 4, 2012.

³⁵ The six types of projects are ones that (1) meet basic human needs; (2) promote democracy and good governance; (3) provide education; (4) conduct sporting activities; (5) support non-commercial development projects; and (6) foster religious activities. Department of the Treasury, Office of Foreign Assets Control, “General License No. 14-C,” Burmese Sanctions Regulations 31 C.F.R. Part 537, April 17, 2012.

³⁶ Ibid.

Policy Changes of May 2012

On May 16, 2012, Burma's Foreign Minister Wunna Maung Lwin arrived in Washington, DC, for a two-day visit at the invitation of former Secretary Clinton.³⁷ During the foreign minister's visit, the Obama Administration announced three significant developments in U.S. policy towards Burma:

1. The White House released a Presidential Memorandum renewing for one year the national emergency with respect to Burma, and thereby extending the sanctions contained in E.O. 13047, E.O. 13310, E.O. 13448, and E.O. 13464 for another year;³⁸
2. President Obama formally nominated Derek Mitchell to be the U.S. ambassador to Burma;³⁹ and
3. President Obama announced an easing of U.S. "bans on the exportation of financial services and new investment in Burma."⁴⁰

Following her meeting with the foreign minister, former Secretary Clinton provided additional details of the easing of the investment and financial service bans.⁴¹ According to Clinton, steps were to be taken "to permit American investment in the country and export of U.S. financial services." She stated that the State Department intended to work with Congress, the U.S. Treasury, and other government agencies "to be sure we are promoting responsible investment and deterring abuses." She also called upon the U.S. business community to set a "good corporate example of doing business in a transparent, responsible manner."

In a subsequent press briefing, unnamed senior Administration officials provided more details about the planned easing of the investment and financial services ban.⁴² U.S. investors in Burma would be allowed to invest in all sectors and export financial services to any Burmese entity, so long as the investment partner or entity in Burma is not on OFAC's Specially Designated Nationals (SDN) list. To ensure that "bad actors" will not receive benefits from the U.S. easing of sanctions, the SDN is to be regularly updated. The criteria for placing a person or company on the SDN list were to be determined, but would probably include evaluations of business practices and attitudes towards Burma's reforms. With regard to Clinton's call for U.S. businesses to be good examples in Burma, the State Department said it was consulting with Congress, U.S. companies, human rights organizations, non-governmental organizations active in Burma, and other interested parties to develop voluntary corporate governance standards for U.S. companies doing business in Burma.

³⁷ Following his stay in Washington, DC, Foreign Minister Wunna Maung Lwin traveled to New York City to see U.N. Secretary General Ban Ki-moon.

³⁸ Office of the Press Secretary, the White House, "Continuation of the National Emergency with Respect to Burma," Presidential Memorandum, May 17, 2012.

³⁹ Office of the Press Secretary, the White House, "Statement by the President on Burma," press release, May 17, 2012.

⁴⁰ Ibid.

⁴¹ Office of the Spokesperson, State Department, "Remarks of Secretary of State Hillary Rodham Clinton and Foreign Minister of Burma U Wunna Maung Lwin after their Meeting," press release, May 17, 2012.

⁴² Department of State, "Background Briefing on Burma," press release, May 17, 2012.

Implementing the May Announcements

On July 11, 2012, the Obama Administration released a series of documents to implement the easing of selected sanctions announced on May 17, 2012. In addition, Executive Order 13619 broadened the scope of sanctions targeted at specific Burmese nationals to include persons who “directly or indirectly threaten the peace, security or stability of Burma”; are responsible for or complicit in the commission of human rights abuses in Burma; have been involved in arms trade with North Korea; or have assisted in acts of these kinds.⁴³

On July 11, 2012, the Obama Administration eased two of the existing sanctions on Burma—a general ban on new U.S. investments in Burma and a prohibition on the export or re-export of financial services to Burma. The general ban on new U.S. investments in Burma was imposed by Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997 (P.L. 104-208). The prohibition of the export or re-export of financial services to Burma was implemented by Section 2 of E.O. 13310 based on presidential authority granted by IEEPA.

New Investments

Via a presidential memorandum, President Obama delegated authority to waive the investment ban as granted by Section 570(e) of P.L. 104-208 to then Secretary Clinton.⁴⁴ That authority was then exercised by Deputy Secretary of State Thomas R. Nides, who reportedly notified Congress of the waiver decision. The waiver paved the way for OFAC to release its decision to create General License No. 17, “Authorizing New Investment in Burma.”⁴⁵ General License No. 17 allows new investments in Burma by U.S. persons subject to certain limitations: no investments with Burma’s Ministry of Defense or any armed group (state or non-state) in Burma; and no investments with Burmese nationals and companies subject to sanctions. In addition, all U.S. investors in Burma must comply with a new State Department reporting requirement for investments in Burma.⁴⁶ New investments in Burma do not require pre-approval or notification, but the U.S. investor is liable if it is determined that an investment has been made with a sanctioned Burmese entity.

The State Department’s proposed reporting requirements have two parts. First, any investment involving the Myanmar Oil and Gas Enterprise (MOGE) must be reported to the State Department within 60 days of the investment. Second, all investments in Burma with an aggregate value of over \$500,000 must be reported to the State Department by providing specific information about the investment each year by April 1. Certain portions of this information will be made public. An investment is considered to have occurred on the date the parties entered into a contract or the U.S. party purchased a share of ownership (including equity interest) in a resource located in Burma.⁴⁷

⁴³ Executive Order 13619, “Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma,” 77 Federal Register 41243-41245, July 13, 2012.

⁴⁴ Presidential memorandum available online at <http://www.whitehouse.gov/the-press-office/2012/07/11/presidential-memorandum-delegation-certain-functions-under-section-570e->.

⁴⁵ Available online at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/burmagl17.pdf>.

⁴⁶ Available online at <http://www.humanrights.gov/wp-content/uploads/2012/07/Burma-Responsible-Investment-Reporting-Reqs.pdf>.

⁴⁷ For purposes of General License No. 17, a new investment is defined by 31 C.F.R. 537.311.

Financial Services

OFAC also announced the creation of General License No. 16, “Authorizing the Exportation or Reexportation of Financial Services to Burma.”⁴⁸ The new license permits the export or reexport of financial services to Burma, subject to certain restrictions: no provision of financial services to Burma’s Ministry of Defense or any armed group (state or non-state) in Burma, Burmese nationals or companies subject to sanctions, or debits to a blocked account. General License No. 16 supersedes General License No. 14-C and 15. The provision of financial services does not require pre-approval from or notification to OFAC. However, the provision of financial services to sanctioned Burmese entities is subject to the penalties prescribed by IEEPA.⁴⁹

New Targeted Sanctions

In addition to easing the two specific sanctions, President Obama imposed sanctions on certain Burmese nationals via E.O. 13619. The E.O. prohibits the issuance of a visa to, freezes the assets of, and bans the provision of financial services to any person who:

- has engaged in acts that directly or indirectly threaten the peace, security, or stability of Burma;
- is responsible for or complicit in the commission of human rights abuses in Burma;
- directly or indirectly imported, exported, reexported, sold, or supplied arms or related materiel from North Korea to Burma;
- is a senior official of an entity that has engaged in any of the preceding activities;
- has materially assisted or supported persons engaged in the preceding activities; or
- is owned or controlled by a person subject to these sanctions.

Mixed Developments in Burma

While the Obama Administration was implementing the policy changes announced in May 2012, the political situation in Burma underwent a mix of positive and negative developments. On May 3, Vice President Tin Aung Myint Oo, widely viewed as being opposed to some of Burma’s political reforms, resigned. Having concluded preliminary ceasefire agreements with 12 different ethnic groups, progress towards more general peace agreements largely stalled and sporadic skirmishes were reported in various parts of Burma. President Thein Sein reorganized his negotiating team, retaining Railway Minister Aung Min, but excluding Aung Thaung, who was unable to broker a ceasefire agreement with the KIO/KIA. In the previously peaceful Rakhine State, rioting broke out in June between the predominantly Muslim Rohingyas (officially referred to as “Bengalis” by the Thein Sein government) and the mostly Buddhist Rakhines (a.k.a. Arakans). Burma’s censorship board, the Press Scrutiny and Registration Division (PSRD), warned publications about their coverage of the rioting and blocked reports of Tin Aung Myint Oo’s resignation. Over the next four months, dozens of people were killed, thousands of homes

⁴⁸ Available online at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/burmagl16.pdf>.

⁴⁹ The penalties associated with violations of IEEPA are specified in 50 U.S.C. 1705, providing for the greater of \$250,000 or “twice the amount of the transaction” for civil violations, and up to 20 years in prison, a fine of up to \$1 million, or both for criminal violations.

and businesses destroyed, and over 100,000 people—mostly Rohingyas—displaced by the civil unrest.⁵⁰

Despite the apparently worsening situation with respect to Burma's ethnic minorities, President Thein Sein made some progress with respect to political rights and economic reform. On July 2, 2012, he pardoned 80 more prisoners, including 25 political prisoners. In August 2012, Burma's censorship board, the Ministry of Information, formally ended pre-publication censorship for all printed materials, but continued to maintain post-publication penalties. Burma also undertook the replacement of its complex multiple exchange rate regime with a unified managed float system.

The summer of 2012 was also a time for significant developments in the political dynamics of the Burmese government. On August 28, President Thein Sein reshuffled his cabinet, bringing some of his closest advisors (including Railways Minister Aung Min) into the President's Office. According to some observers, the cabinet reorganization was designed to purge the Union Government of resisters to reforms; to other observers, the move was an attempt to consolidate the President's political power at the expense of the Union Parliament.

The latter interpretation was given more credence by the ongoing debate over the oversight authority of the Union Parliament. The debate centered around the constitutional authority of parliamentary committees, commissions, and other bodies to compel ministerial officials to appear before them. The issue was brought before Burma's Constitutional Tribunal, a nine-member body appointed by President Thein Sein and the speakers of the two houses of the Union Parliament. On March 28, 2012, the Tribunal ruled the bodies did not have the authority to compel testimony of ministerial officials. The Tribunal's decision, however, was not released until August 16, 2012, and was met by immediate protests by the Union Parliament, and the calling for the impeachment of the nine tribunal members. On September 7, 2012, the nine tribunal members resigned.

President Obama Granted New Waiver Authority

The Obama Administration announced further easing of sanctions on Burma concurrent with the separate U.S. visits by Aung San Suu Kyi and President Thein Sein in September 2012. On September 19, 2012, the Office of Foreign Assets Control (OFAC) of the Treasury Department removed President Thein Sein and Lower House Speaker Shwe Mann from its list of Specially Designated Nationals (SDN), effectively eliminating any financial sanctions imposed on the two Burmese officials. On the same day, Representative Edward Royce, on behalf of the President, introduced H.R. 6431, which would grant the President the authority to waive U.S. opposition to IFI assistance to Burma if the President determines that doing so is in the national interest of the United States. H.R. 6431 was passed the same day by voice vote in the House and on September 22 by unanimous consent in the Senate, and was signed into law (P.L. 112-192) by the President on October 5, 2012.

Prior to her meeting in New York City with President Thein Sein on September 26, 2012, then Secretary Clinton announced that steps were being taken to ease restrictions on the import of Burmese goods into the United States.⁵¹ According to Clinton, the easing of the import ban was

⁵⁰ United Nations Office for the Coordination of Humanitarian Affairs, "Myanmar: Humanitarian Snapshot—Displacement in Rakhine State," press release, November 15, 2012.

⁵¹ State Department, "Remarks with Burmese President Thein Sein Before Their Meeting," press release, September 26, 2012.

being done “in recognition of the continued progress toward reform and in response to requests from both the government and the opposition [in Burma].”

President Thein Sein addressed the U.N. General Assembly on September 27, 2012, and provided his own assessment of Burma’s political reform process. In his speech, he presented his country as “leaving behind a system of authoritarian government wherein the executive, legislative and judicial powers were centralized,” and replacing it with “a democratic government and a strong, viable parliament following a practice of check and balance.”⁵² As evidence of this transition, he cited the granting of amnesties for prisoners; the return of political exiles; the “successful” April parliamentary by-elections; the “abolition of censorship of media, the fourth estate”; freedom of Internet access; “the establishment of workers’ and employers’ organizations”; and “the increased participation of the people in the political process.” President Thein Sein also acknowledged that the nation faced several challenges, including “the cessation of all armed conflicts” and “the recent communal violence in Rakhine State.”

USAID Mission, IFI Assistance Ban Waiver, and Human Rights Dialogue

In fulfillment of Secretary Clinton’s April 2012 announcement, Chris Milligan was sworn in as USAID’s Mission Director to Burma on August 29, 2012, the first USAID Country Mission Director in 24 years (see text box, “USAID in Burma”). According to the mission’s webpage (<http://www.usaid.gov/burma/our-work>), it is developing programs covering democracy, human rights, and the rule of law; transparent governance; peace and reconciliation; food security; and health. According to USAID, the mission has grown to about 20 people, including temporarily detailed staff.

On October 10, 2012, President Obama delegated the authority to waive U.S. opposition to IFI assistance to Burma, granted by P.L. 112-192, to Secretary Clinton via a presidential memorandum.⁵³ On October 12, Clinton released a determination “that it is in the national interest of the United States” to support assistance for Burma, citing the authority granted by Section 1 of P.L. 112-192 and the presidential memorandum of October 10, 2012, effectively waiving the requirement in Section 5 of the 2003 BFDA that the United States oppose and vote against IFI assistance to Burma. The waiver specifically referred to a pending vote by the World Bank’s board on October 30, 2012, to consider a \$80 million grant to Burma for community-driven development. The World Bank subsequently approved the grant on November 2, 2013, presumably with the support of the United States.

Following the IFI assistance ban waiver, Assistant Secretary of State for Democracy, Human Rights, and Labor Michael Posner led a diverse U.S. delegation to Burma for a two-day bilateral human rights dialogue in Naypyidaw. Included in the U.S. delegation was Lieutenant General Francis Wiercinski, commander of the U.S. Army Pacific. The dialogue’s agenda covered a range of topics, such as rule of law, the protection of human rights, and military code of conduct. Following the dialogue, it was reported that Burma would be invited to attend Cobra Gold, the largest multilateral joint military training exercise in the Asia-Pacific. Pentagon Press Secretary George Little said on October 19, 2012, that the United States was willing to consider a request

⁵² “Myanmar Will Be Participating More Actively in Activities of United Nations in Various Fields,” *New Light of Myanmar*, September 28, 2012.

⁵³ White House, “Delegation of Functions to the Secretary of State to Support Assistance by International Financial Institutions for Burma,” 77 *Federal Register* 65455, October 29, 2012.

from Thailand “to allow a small contingent of Burmese military officers to attend the joint exercise Cobra Gold 2013 as observers.”⁵⁴

USAID in Burma

USAID formally notified Congress on April 5, 2012, of its intention to reopen its mission in Rangoon, operating out of the U.S. embassy. USAID closed its mission in Rangoon in 1962, following the military coup, but reopened the mission in 1978. The mission was closed for a second time in 1989, after the military junta’s violent suppression of the 8888 Uprising. Limited in-country USAID assistance was resumed in 2003 for targeted health programs.

According to USAID Assistant Administrator Nisha Biswal, the USAID mission in Rangoon is expected to be comprised of 5 to 7 U.S. Direct Hire staff, plus 8 to 10 Foreign Service National staff.⁵⁵ The projected operating expense for FY2012 was \$598,000, and the requested operating expenses for FY2013 is \$1.7 million. Essential support services (procurement, financial management, and legal support) will continue to be provided by USAID’s Regional Development Mission in Asia, located in Bangkok, Thailand. Administrator Biswal indicated that the planned size and budget for the new mission may change when the final mission plan is approved.

According to the Congressional Budget Justification, country account funding for Burma was relatively unchanged in fiscal years 2010, 2011, and 2012, at about \$38 million (see **Table I**). Prior to the decision to reopen the USAID mission in Burma, the Obama Administration had requested \$38 million in FY2013 for Burma.

Table I. U.S. Assistance Appropriations for Burma

in millions of U.S. dollars

| Fund | FY2010 (actual) | FY2011 (actual) | FY2012 (estimate) | FY2013 (requested) |
|---------------------------|-----------------|-----------------|-------------------|--------------------|
| Total | 38.600 | 38.527 | 38.100 | 38.000 |
| Economic Support Fund | 36.500 | 36.427 | 35.100 | 27.200 |
| * Civil Society | 9.500 | 9.500 | 8.500 | 7.455 |
| * Education | 3.300 | 3.300 | 3.300 | 2.306 |
| * Humanitarian Assistance | 23.700 | 23.627 | 23.300 | 17.439 |
| Global Health Programs | 2.100 | 2.100 | 3.000 | 10.800 |

Source: CRS compilation from various State Department and USAID sources.

According to information provided by USAID, in-country projects already being funded include \$4.3 million for strengthening community-based organizations, \$4.0 million for microfinance activities, \$2.6 million for HIV/AIDS assistance, \$2.5 million for community leaders training, \$2.5 million for technical assistance on avian influenza, and \$2.4 million for journalist training. In addition, USAID is continuing its funding for internally displaced persons (IDPs) in eastern Burma and Burmese refugees in Thailand. It has budgeted \$55 million for humanitarian assistance program providing maternal/child health care, water/sanitation assistance, and food security training. In addition, \$40 million has been allocated to health and education services to Burmese IDPs and refugees.

On March 8, 2013, the U.S. Embassy in Rangoon issued a press release announcing a three-year, USAID support program to aid Burma in its preparations for the 2015 parliamentary elections. The \$11 million program is reportedly aimed at improving election administration, promoting voter education, supporting political party development, and strengthening parliamentary assistance.

⁵⁴ Jim Garamone, “U.S. Open to Thais Inviting Burma to Observe Cobra Gold,” *American Forces Press Service*, October 19, 2012.

⁵⁵ U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on East Asian and Pacific Affairs, U.S. Policy Toward Burma, 112th Cong., 2nd sess., April 26, 2012.

President Obama's Visit and Lifting the Import Ban

The White House announced on November 8, 2012, that President Obama would make a brief stopover in Burma as part of his trip to Southeast Asia to attend the East Asia Summit in Cambodia. The announcement indicated that President Obama would meet with President Thein Sein and Aung San Suu Kyi, as well as give a speech about political reform in Burma. The stopover in Burma—scheduled for November 19, 2012—would make President Obama the first U.S. President to visit Burma while in office.

In her blog the day following the announcement, Special Assistant to the President and Senior Director for Multilateral Affairs and Human Rights at the National Security Council Samantha Power wrote:

In the past year, since President Obama first noted “flickers of progress” in Burma—and since Secretary Clinton became the most senior U.S. official to visit since 1955—we have seen continued progress on the road to democracy.... Seeing these signs of progress, we have responded in kind, with specific steps to recognize the government’s efforts and encourage further reform. At the same time, we have also updated sanctions authorities that allow us to target those who interfere with the peace process or the transition to democracy....⁵⁶

Senior Director Power recognized in her blog “the challenges that Burma faces,” enumerating the recent ethnic unrest in Rakhine State, the ongoing ethnic conflicts, the need to develop the justice system, the cultivation of a free press, and formation of a “robust civil society.” Later on, she listed out the main issues that she thought would likely feature prominently in President Obama’s trip—prisoners of conscience, political reforms, rule of law, and peace and reconciliation.

On November 15, 2012—two days before President Obama’s departure for Asia—National Security Advisor Thomas E. Donilon spoke at the Center for Strategic and International Studies in Washington, DC.⁵⁷ In his presentation, Donilon stated, “In becoming the first U.S. President to visit Burma, the President is endorsing and supporting the reforms underway, and giving momentum to reformers and promoting continued progress.”

On the same day as Donilon’s speech, the State Department issued a determination that it was in the national interest of the United States to waive the ban on imports from Burma described in Section 3(a) of the 2003 BFDA.⁵⁸ Section 3(a) banned the import of any products of Burmese origin, as well as products from companies owned or controlled by certain organizations and individuals. Based on this determination, OFAC authorized General License No. 18 on November 16, 2012, allowing the import of products of Burmese origin except those prohibited by Section 6 of the Tom Lantos Block Burmese JADE Act (jadeite and rubies from Burma, or items containing jadeite and rubies from Burma), as well as products blocked by E.O. 13310, E.O. 13448, E.O. 13464, and E.O. 13619.

⁵⁶ Samantha Power, “Supporting Human Rights in Burma,” blog, November 9, 2012, <http://www.whitehouse.gov/blog/2012/11/09/supporting-human-rights-burma>.

⁵⁷ Tom Donilon, “President Obama’s Asia Policy 7 Upcoming Trip to Asia,” remarks as prepared for delivery, Center for Strategic and International Studies, November 15, 2012, Washington, DC.

⁵⁸ Department of State, “Determination under the Burmese Freedom and Democracy Act of 2003 Concerning the Importation of Articles that are Products of Burma,” November 15, 2012.

President Obama's Meetings

President Obama's unprecedented visit to Burma included meetings with President Thein Sein and Aung San Suu Kyi, as well as a speech from the University of Yangon open to the public and televised live.⁵⁹ The choice of the University of Yangon as the venue for the President's speech was politically significant as the campus is widely seen as the birthplace of Burma's anti-colonial movement and the 1988 uprising against military rule.

In his speech, President Obama focused on a number of similar social issues in Burma and the United States, and discussed how the United States has chosen to address those issues, as a means of commenting on Burma's incomplete reform process.⁶⁰ He stated that the right of free expression, the freedom of assembly, and the freedom of the press are fundamental concepts for democracy in the United States. He also stated that the U.S. system of governance constrains the power of its leaders, granting the President authority over the military, but not over Congress and the judicial system. In addition, President Obama spoke about the "the right of all people to live free from fear," and how important national reconciliation and the end of ethnic discrimination will be for Burma's democratic reforms. He concluded by saying:

The road ahead will be marked by huge challenges, and there will be those who resist the forces of change. But I stand here with confidence that something is happening in this country that cannot be reversed, and the will of the people can lift up this nation and set a great example for the world. And you will have in the United States of America a partner on that long journey.

The meetings with President Thein Sein and Aung San Suu Kyi were reportedly both frank and constructive, but the post-meeting remarks reflect a different tone and assessment of the situation in Burma. President Obama described his meeting with President Thein Sein as a "very constructive conversation" and expressed his appreciation for Burma's "concrete cooperation" on non-proliferation issues. He noted, however, that the political reforms so far are "just the first steps on what will be a long journey." President Thein Sein, in his comments, alluded to agreements between the two countries on ways to develop democracy and promote human rights in Burma (see "Agreements with Burma" below).

Following the meeting with Aung San Suu Kyi, President Obama provided a concise summary of the development of U.S. policy towards Burma since 2011. He went on to state, "In my discussions here in Yangon, our goal is to sustain the momentum for democratization." For her part, Aung San Suu Kyi said that the two had been able to "discuss our various concerns openly," but also cautioned that "we have to be very careful that we are not lured by a mirage of success."

Agreements with Burma

Concurrent with President Obama's visit, the Burmese government agreed to take several actions considered important by the Obama Administration, including its intention to:

- Reaffirm its commitment to comply with U.N. Security Council Resolution No. 1874, which imposes economic and commercial sanctions on North Korea;

⁵⁹ President Obama also met with Pyithu Hluttaw (Lower House) Speaker Shwe Mann and Amyotha Hluttaw (Upper House) Speaker Khin Aung Myint.

⁶⁰ Office of the Press Secretary, White House, "Remarks by President Obama at the University of Yangon," press release, November 19, 2012.

- Sign the Additional Protocol to the IAEA Comprehensive Safeguards Agreements and give effect to Small Quantities Protocol;
- Allow the International Committee of the Red Cross (ICRC) to resume prisoner visits, in coordination with the Ministry of Home Affairs;
- Initiate a transparent process to review the cases of “prisoners of concern”;
- Agree to the U.S.-Myanmar Joint Plan on Trafficking in Persons;⁶¹
- Implement the International Labor Organization’s (ILO’s) Action Plan on Forced Labor and the New Wards and Village Tracts Administration Act;
- Commit to becoming a full member of Open Government Partnership (OGP) by 2016;⁶²
- Continue to pursue a durable ceasefire in Kachin State, and sustainable political solutions with the nation’s various ethnic armed groups; and
- Prevent violent attacks on civilians in Rakhine State, and hold accountable the perpetrators of such attacks.

More Mixed Developments in Burma

The weeks following President Obama’s visit saw several political developments in the country that in some cases raised questions about the Burmese government’s commitment to political reform and the agreements it had just made with the United States. Burmese police violently attacked a peaceful protest against a copper mine in Sagaing Region, resulting in the injury of dozens of Buddhist monks and civilians.⁶³ The Burmese military launched a major assault against the Kachin Independence Army (KIA) in the Kachin State, despite the promises made to President Obama. However, President Thein Sein and the Union Parliament did take steps to protect the people’s right to assembly and freedom of the media.

Escalation of Fighting in Kachin State

Fighting between the Tatmadaw and the KIA had been sporadic since Burmese Army broke the 17-year-old ceasefire in June 2011. Repeated efforts to initiate ceasefire talks had proven unsuccessful, and in April 2012, the Burmese Army began a major build-up of forces in the Kachin State. Under the name, “Operation Thunderbolt,” the Tatmadaw launched a major offense

⁶¹ The Joint Plan calls for the repeal of the 1907 Town and Villages Act, enactment of the New Wards and Village Tracts Administration Act, developing a comprehensive plan (with the ILO’s assistance) to combat forced labor, signing an action plan with the United Nations about child soldiers, opening two new liaison offices on the Thai border, and improving anti-trafficking efforts in cooperation with Thailand and the United States.

⁶² According to its webpage (<http://www.opengovpartnership.org/about>), the Open Government Partnership is “a new multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.” The United States was one of the OGP’s founding members on September 20, 2011.

⁶³ On November 29, 2012, Burmese police allegedly used white phosphorus shells, tear gas, and water cannons to break up a peaceful protest. Following the assault, President Thein Sein appointed a 16-member commission, headed by Aung San Suu Kyi, to investigate the incident. On March 12, 2012, the commission released its finding, expressing its support for continuation of the controversial project, igniting more protests and a heated confrontation between Aung San Suu Kyi and opponents to the copper mine.

against the KIA in mid-December 2012, with the aim of taking over the KIA/KIO headquarters in the city of Laiza.⁶⁴

Operation Thunderbolt was distinctive from previous Burmese military assaults on ethnic militias by the number of soldiers committed to the campaign (at least five battalions) and the use of aircraft (fighters and helicopters) to support the ground troops. The attack on the KIA drew international criticism in part because it violated instructions from President Thein Sein to not to attack the KIA, as well as reports of significant civilian casualties, human rights abuses by Burmese soldiers, and the impressment of child soldiers. Allegations that the KIA were using child soldiers also appeared in the press. The Burmese government and its newspaper, *The New Light of Myanmar*, maintained that the KIA have been the aggressors and that the Tatmadaw were responding in self-defense.

On December 17 and 18, 2012, Ambassador Mitchell and acting Special Representative Murphy travelled to Kachin State to assess the situation. Following their visit, the U.S. Embassy in Rangoon issued a statement on December 20, 2012, urging “both sides of this conflict to take immediate steps to establish a dialogue process that will build trust, address the underlying causes of the conflict, and facilitate international assistance to IDPs [internally displaced persons] in Kachin State....”⁶⁵

A fragile ceasefire announced on January 19, 2013, quickly broke down as Tatmadaw forces reportedly attacked a KIA base a few kilometers from the city of Laiza in southeastern Kachin State. The U.S. Embassy in Rangoon released a statement on January 24, 2013, which was critical of Burmese Army’s resumption of fighting:

The United States is deeply concerned by ongoing violence in Burma’s Kachin State. Despite the Burmese government’s announcement that a ceasefire was to take effect on January 19, media and NGO reports indicate that the Burmese Army continues a military offensive in the vicinity of the Kachin Independence Army headquarters in Laiza. The United States strongly opposes the ongoing fighting, which has resulted in civilian casualties and undermined efforts to advance national reconciliation.⁶⁶

The following day, Burma’s Ministry of Foreign Affairs issued a press release stating that the KIA were responsible for the violation of the ceasefire, which the Ministry describes as “terrorist attacks,” and that “the peace door remains open for the KIO/KIA.”⁶⁷

Initial negotiations between representatives of the Union Government and the KIO/KIA were held on February 4, 2013, in the town of Ruili, in China’s Yunnan Province. Fighting reportedly continues in Kachin State despite the negotiations between the KIO/KIA and the Union Government. It is unclear if the Tatmadaw support the negotiations with the KIO/KIA, or if they will abide by any agreement reached.

Legal Reforms

While the fighting in the Kachin State continued unabated in early 2013, the Union Government and the Union Parliament implemented some changes in policy that improved the protection of

⁶⁴ For a concise summary of the recent fighting in Kachin State, see Anthony Davis, “Pyrrhic Victory in Myanmar,” *Asia Times*, January 31, 2013.

⁶⁵ U.S. Embassy Rangoon, press release, December 20, 2012.

⁶⁶ U.S. Embassy Rangoon, “Statement by Embassy Rangoon Spokesperson,” January 24, 2013.

⁶⁷ Ministry of Foreign Affairs, press release, January 25, 2013, published in the *New Light of Myanmar*, January 26, 2013.

civil liberties. The Union Parliament formally dissolved the Press Scrutiny and Registration Division (PSRD) on January 24, eliminating the government agency responsible for media and press censorship. A Copyrights and Registration Division is to be established under the Information and Public Relations Department of Ministry of Information.

On January 28, 2013, President Thein Sein issued Order No. 3/2013, abolishing Order No. 2/88, which was issued by Burma's military junta on September 18, 1988, banning the gathering of five or more people without official permission.⁶⁸ According to the official statement, Order No. 2/88 was being repealed because it violated Article 447 of the 2008 Constitution.

In a surprise move, Burma's Ministry of Information (MOI) forwarded a draft media legislation to the Union Parliament on March 4, 2013. The MOI bill, designed to replace the 1962 Printer and Publishers Registration Act, was sharply criticized by various media groups in Burma, who said that some of its provisions were more restrictive than the 1962 law. In addition, the MOI's decision to forward the draft law to the Union Parliament apparently violated an agreement with the Myanmar Press Council, an interim group organized by the MOI in August 2012 to review media affairs and help draft new legislation.

The text of the draft legislation was published in the Burmese version of the *New Light of Myanmar* on February 27, 2013. Over the ensuing weekend, the Myanmar Journalist Association (MJA), Myanmar Journalist Network (MJN), and the Myanmar Journalist Union (MJU) issued statements condemning the draft bill. Among the most objectionable provisions in the draft bill is its prohibition of publishing articles reporting on ethnic conflicts, criticizing the 2008 constitution, or "disturbing the rule of law." The draft law also establishes a MOI-appointed "registration official" with the authority to issue or withdraw publishing licenses, which the three journalist organizations see as a mechanism to censor the media. In addition, the Burmese journalists say the law's proposed penalties—three to six months imprisonment and fines of up to \$12,000—are more severe than the 1962 law.

Recent Developments in U.S. Policy

On February 22, 2013, OFAC issued general license No. 19, waiving restrictions on conducting financial transactions with four Burmese banks—Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank, and Myanma Investment and Commercial Bank—subject to certain limitations.⁶⁹ On the same day, OFAC added Ayeyarwady Bank to the SDN list. General license No. 19 was reportedly issued to facilitate the financial activities of U.S. companies and non-governmental organizations operating in Burma, who had claimed that the U.S. sanctions were unduly causing difficulties. OFAC also indicated that allowing transactions with four of Burma's larger banks "supports the July 2012 easing of U.S. economic sanctions on Burma that authorized new investment in Burma by U.S. persons and encourages additional U.S. economic involvement in Burma."⁷⁰ Critics of the OFAC decision noted that the banks are owned by "cronies" with close ties to the Burmese military and people considered opponents to Burma's political reforms.

The Tom Lantos Human Rights Commission held a hearing on human rights in Burma on February 28, 2013, at which Assistant Secretary of State Michael H. Posner and Acting Special

⁶⁸ "Abolishment of Order No. 2/88," *New Light of Myanmar*, January 28, 2013.

⁶⁹ Office of Foreign Assets Control, "General License No. 19," February 22, 2013.

⁷⁰ Office of Foreign Assets Control, "Specially Designated Nationals List Update," press release, February 22, 2013.

Representative and Policy Coordinator for Burma W. Patrick Murphy testified.⁷¹ The written statements of the two senior officials reflected the current attitude and approach of the Obama Administration to U.S. policy towards Burma.

Special Representative Murphy stated early in his testimony, “[W]e have entered a new era of relations between the United States and Burma.” As a result of President Thein Sein’s “unexpected and ambitious agenda of reform,” according to Special Representative Murphy, “[t]he U.S. Government, in partnership with Congress, has responded to these reforms to recognize and encourage further progress.” Assistant Secretary Posner spoke in his testimony in a similar vein, stating, “[T]he United States seeks to support the government and people of Burma as they seize the opportunity of change....” Also, in contrast to the cautious statements by Obama Administration officials soon after the appointment of President Thein Sein, Assistant Secretary Posner testified that “the United States should remain committed to serving as a long-term partner in the reform process as long as it continues to move forward.”

Issues for U.S. Policy

Much has happened—both positive and negative—since Burma’s quasi-civilian government took power. The Obama Administration may understandably take some credit—and responsibility—for changes that have occurred in Burma since announcing its new policy towards Burma. However, the political situation in Burma remains fragile and complex, raising a number of important issues about the prospects for political reforms in the future. What follows is a brief examination of some of the more critical issues.

Commitment and Extent of Reform

General Khin Kyunt, then SPDC Prime Minister, announced on August 30, 2003, a seven-step roadmap to the creation of a “disciplined democracy” in Burma. According to the SPDC, the transfer of power to the Union Government and the Union Parliament on March 30, 2011, completed the sixth step and moved the nation into the seventh and final step of building a modern, developed, and democratic nation. Not all of Burma would agree with that assessment.

President Thein Sein has spoken on a number of occasions about the development of democracy in Burma, indicating both that the democratization of Burma is a work in progress and his apparent willingness to continue that progress. However, his statements have not provided a clear image of what a “disciplined democracy” in Burma would look like and what measures need to be taken to create such a democracy. Several key elements of a future democratic Burma remain sources of serious political debate, including:

- Will the Burmese military be fully under civilian control, or will it retain some autonomy? Will the Tatmadaw continue to be given special powers with respect to the members of the Union Parliament and ministerial appointments?
- Is a democratic Burma to be a federal government consisting of relatively autonomous states (as many ethnic organizations seek), or will it feature a more powerful central government (as exists under the 2008 constitution)?
- What will be the balance of power between the three branches of government? Will the President and appointed Ministers retain more power than the Union

⁷¹ U.S. Congress, House Tom Lantos Human Rights Commission, *Human Rights in Burma*, 113th Cong., 1st sess., February 28, 2013.

Parliament? Will the President and Vice Presidents be selected by the Union Parliament or by some other means, such a popular vote?

- What will be the conditions for citizenship in Burma? Will the Rohingyas born in Burma be considered citizens and be granted the same rights as other Burmese citizens?
- Will the existing restrictions on civil liberties, such as post-publication censorship and the prohibitions on criticism of the Burmese military, be removed?

The Role of the Military

The military remains one of most opaque and powerful institutions in Burma. The Tatmadaw and its leader, Commander-in-Chief Vice Senior General Min Aung Hlaing, have generally refrained from public comments or statements. Little is known about the attitudes of senior military officers toward Burma's political reforms or what role they think the military should have in Burma's "disciplined democracy."

The relationship between the military and Union Government is another opaque aspect of Burmese politics. President Thein Sein's most recent ministerial changes in February 2013 saw the appointment of two more former generals to his Cabinet—Air Force Commander-in-Chief General Myat Hein was chosen as Minister for Telecommunications, and Lieutenant General Thet Niang Win was selected as Minister of Border Affairs, an office reserved for military officers under the 2008 Constitution. As of March 2013, no fewer than 18 of the 30 cabinet ministers were current or past military officers.

The actions—or inactions—of the Tatmadaw seem to indicate that their support for the Union Government and political reform may be limited. Commander-in-Chief Min Aung Hlaing has not publicly confirmed ordering his troops to cease military operations against the KIO/KIA despite President Thein Sein at least twice instructing him to give such an order. In addition, his reassignment of top military personnel, including regional commanders, has raised questions about General Min Aung Hlaing's political intentions. Similarly, the replacement of 59 of the military's 166 appointed members of the Union Parliament in April 2012, following the NLD's near sweep of the parliamentary by-elections, was interpreted by some observers as an effort to tighten discipline among the military's selected representatives.

Relations between the military and the Union Parliament are another critical issue for the future of political reform in Burma. Although 25% of the members of each chamber are military officers, relations between the military and the Union Parliament have been strained from time to time. Two recent incidents demonstrate the tensions between the two institutions. During the February 2013 session, the Union Parliament questioned the overall size of the proposed military budget, nearly 21% of overall federal spending. In early March 2012, a parliamentary commission investigating land seizures by the military reported that between July 2012 and January 2013, the Tatmadaw had confiscated over 247,000 acres of land. The commission recommended that the military return most of the confiscated land to the owners or the state, and provide compensation for persons displaced by the land seizures.

The military's pervasive presence in many corners of Burma's economy is another unresolved aspect of its role in a reformed Burma. Under the SPDC, regional commanders effectively served as the head of the local government. They expected and were able to secure extensive economic benefits from their political power. In addition, various major corporations in Burma's more lucrative sectors—mining, oil and gas, and timber—are allegedly owned by the military, senior officers in the military, or their family or trusted friends. One of the most prominent of these

entities is the Union of Myanmar Economic Holdings Limited (UMEHL or UMEH), also known as Myanma Economic Holding, which is reportedly owned by Ministry of Defense and the Myanmar Economic Corporation (MEC), which in turn is operated by the Ministry of Defense on behalf of Burma's military officers. These companies are conglomerates, owning companies in a wide range of economic sectors, including ownership of two of Burma's larger banks—Myawaddy Bank (owned by UMEHL) and Innwa Bank (owned by MEC). The revenues of the Tatmadaw's corporate assets provides the military with a source of revenue independent of the federal budget, as well as some control over the nation's economy.

Prospects for National Reconciliation

Burma has been engaged in a low-level civil war of varying degrees of military intensity since its establishment in 1948. In the view of some of Burma's ethnic minorities, the Burmese government failed to abide by the terms of the Panglong Agreement that granted the ethnic states a degree of autonomy. According to the Tatmadaw, the inability of the democratic civilian government to suppress the ethnic militias and protect the national integrity of Burma led to the 1962 military coup. To this day, senior Burmese military officers maintain that the Tatmadaw is responsible for preserving Burma in its current form during the last 60 years. Article 20 of the 2008 Constitution explicitly designates the Burmese military as the main entity for "safeguarding the nondisintegration of the Union, the non-disintegration of National solidarity and the perpetuation of sovereignty."

The Union Government has proposed a three-step peace process to negotiate an end to the civil war and achieve a reconciliation between the Burman majority and the various ethnic organizations opposed to the current configuration of the Burmese government. The first step is the negotiation of a preliminary ceasefire agreement with all the ethnic organizations that maintain a militia. The second step is to negotiate broader agreements with the ethnic organizations regarding the political and economic development of the States in which the ethnic organizations and their militias operate. The third step calls for the negotiation of a national agreement on how to amend or alter the 2008 Constitution in a manner consistent with the agreements achieved in the second stage. The Union Government's proposal assumes the preservation of the 2008 Constitution, with amendments, and the disbanding of the ethnic militias or their merger into the Tatmadaw. The Union Government has established a "peace committee" consisting of a 12-member central committee headed by President Thein Sein and a 52-member working committee headed by Vice-President Sai Mauk Kham. Former Railway Minister Aung Min, however, is widely seen as the Union Government's lead negotiator in talks with the ethnic organizations.

The Union Government's three-step peace process has been rejected by several of the more prominent ethnic organizations. An alliance of 12 ethnic organizations, the United Nationalities Federal Council (UNFC), has proposed an alternative path to national reconciliation involving direct negotiations between the Union Government and the UNFC, followed by a national conference of ethnic organizations, and the convening of a national convention to negotiate the terms of a "national accord" for the establishment of a federal union of Burma. The UNFC proposal does not presume the preservation of the 2008 Constitution, or the disbanding or merger of the militias into the Tatmadaw. The UNFC has also appointed a negotiating team consisting of representatives of its member organizations.

Talks between the Union Government and the various ethnic organizations, including the UNFC, have yielded mixed results. Preliminary ceasefire agreements have been reached with 13 of 21 different groups, with the critical exception of the KIO/KIA. Informal talks between the UNFC and the Union Government were held in Ruili, China, in February 2013, resulting in an agreement

to hold future talks. None of the negotiations have resulted in the completion of the second step of the Union Government's three-step peace process.

Several unresolved issues underlie the efforts to achieve national reconciliation in Burma. First, a consensus needs to be reached regarding the relative powers of the central government and the ethnic States, particularly with respect to the political and economic development of the States. Many ethnic organizations seek a comparative high degree of autonomy for their States, but the Union Government and the Burmese military seemingly prefer a stronger central government. Second, any agreement on national reconciliation will require the support and approval of the Tatmadaw. However, the Burmese military has generally not participated in the current negotiations. Also, widespread reports of Burmese Army attacks on ethnic militias with whom a preliminary ceasefire agreement has been reached raise doubts about the Tatmadaw's support of the peace process or the ability of the Union Government's peace committee to speak on behalf of the Burmese military. Third, the parties need to agree on the process for negotiating terms of national reconciliation. The Union Government is pressing for an approach that operates within the structure of the 2008 Constitution and would eventually incorporate the ethnic organizations into the current governance system as political parties contesting in parliamentary elections. The major ethnic groups prefer to hold talks with the Union Government as equals, and do not accept the implicit assumption of the legitimacy of the 2008 Constitution and the Union Government implied by the approach proposed by the Union Government. As a result, the future of the 2008 Constitution appears to be a critical element of any proposal for national reconciliation.

The Future of the 2008 Constitution

The entire process by which the 2008 Constitution was drafted and adopted is politically problematic for Burma. Many of the opposition parties and the ethnic organizations did not participate in the drafting of the Constitution, which is generally viewed as having been written by the SPDC to protect and preserve the preferential status and power of the Burmese military. Public access to the written text of the Constitution was limited before the national referendum was held in 2008, and the official results of the plebiscite are widely seen as fraudulent. The parliamentary elections held in November 2010 under the provisions of the 2008 Constitution are similarly considered neither free nor fair, raising questions about the legitimacy of the Union Government and the Union Parliament.

The Union Government and the Burmese military view the 2008 Constitution as a legitimate document governing the nation. President Thein Sein has indicated a willingness to consider limited amendments to the constitution. For example, it appears that President Thein Sein is open to modifications of the privileged status of the Tatmadaw under the constitution, including the size of its membership in the Union Parliament, but to an unspecified extent. The Tatmadaw reportedly is also open to limited changes to the constitution, but not ones that would fundamentally alter their special status.

The opposition parties within the Union Parliament—led by Aung San Suu Kyi and her fellow NLD members—would also like to see amendments to the 2008 Constitution. For example, the NLD would like to change certain provisions that bar Aung San Suu Kyi from serving as President following the 2015 parliamentary elections. The NLD and other opposition party members of the Union Parliament seem willing to follow the amendment process in the constitution.

However, many of the ethnic organizations do not accept the 2008 Constitution, and are unlikely to comply with its provisions for amending the constitution. The opposition groups prefer to negotiate directly with the Union Government and the Tatmadaw about changes in the national

government and the adoption of a new constitution. They may, however, accept that the Union Government will want to follow the constitution's process to adopt amendments as part of a negotiated agreement.

The requirements to amend the constitution may be too arduous to implement such a negotiated agreement. Chapter XII of the 2008 Constitution specifies how it can be amended. A bill to amend the Constitution must be submitted to the Union Parliament as a whole and obtain the support of at least 20% of members before it can be considered by the Union Parliament. To be adopted, the bill must receive the support of no less than 75% of the members, and for certain specified sections of the Constitution also receive "in a nation-wide referendum only with the votes of more than half of those who are eligible to vote." This latter provision would appear to require the approval of no less than 50% of the eligible voters regardless of the level of turnout for the national referendum. The specified sections include those setting the general structure of the government, providing for the special status of the military in the government (including the appointment of military personnel to the Union Parliament and that they constitute one quarter of the members of each chamber), establishing the conditions for the declaration of a state of emergency and the transfer of sovereign power to the Commander-in-Chief of the Burmese military, setting the requirements for eligibility to serve as President, and specifying the requirements to amend the Constitution.

These requirements imply that any amendment to the Constitution must obtain the support of a portion of the military appointees to the Union Parliament, and thereby indirectly, the support of the Tatmadaw. It is uncertain if any amendment acceptable to the Burmese military will sufficiently alter the current government structure to satisfy the ethnic organizations. If such a compromise can be achieved, the amendment must still be approved by more than 50% of the eligible voters, which could be a challenge. Voter turnout for the April 2012 parliamentary by-elections in some districts was not much above 50%.

Options for Congress

The 113th Congress may decide to take a more active role in the formulation of U.S. policy towards Burma during this time of potential political transition. Some critics of the Obama Administration's handling of Burma relations maintain that it has moved too fast and too far in relaxing sanctions and has become too close to President Thein Sein and the Union Government. Other critics say that the Obama Administration has moved too slowly and cautiously, and that the United States is losing what little influence it may have over the political dynamics and economic development of Burma. Congress may choose to make its own assessment of the recent conduct of U.S. policy towards Burma, and act as it deems appropriate based on that assessment.

Congressional Activity on Burma During the 112th Congress

The 112th Congress passed five laws, introduced 28 separate bills, and held six hearings related to Burma. Except for P.L. 112-192, the five laws either extended or reiterated sanctions imposed on Burma in previous laws. Most of the 28 bills introduced were reported to their respective committees of jurisdiction and saw no further action. The six hearings included ambassadorial nomination hearings by the Senate Committee on Foreign Relations. Two of the six hearings were focused exclusively on U.S. policy in Burma, one by the Senate Committee on Foreign Relations and another by the House Committee on Foreign Affairs.

Three of the five new laws—P.L. 112-33, P.L. 112-36, and P.L. 112-163—extended the general import ban contained in Section 3 of the Burmese Freedom and Democracy Act of 2003 (P.L.

108-61) which is subject to annual renewal.⁷² The two other laws, P.L. 112-74 and P.L. 112-192, pertained to the use of appropriated funds and international financial institutions (IFIs) providing assistance to Burma, respectively.

Section 8128 of Division A of P.L. 112-74, the Consolidated Appropriations Act, 2012, prohibited the use of any funds appropriated for international military education and training (IMET), foreign military financing, excess defense articles, assistance under Section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (P.L. 109-163), issuance for direct commercial sales of military equipment, or peacekeeping operations in Burma (as well as other selected countries) if the funds “may be used to support any military training or operations that include child soldiers.” Section 7014 of Division I of P.L. 112-74 banned the use fund appropriated for international assistance to Burma, and Section 7044(b) requires the Secretary of the Treasury to “instruct the United States executive directors of the appropriate international financial institutions to vote against any loan, agreement, or other financial support for Burma.”

P.L. 112-192 granted the Secretary of the Treasury the option of instructing the U.S. Executive Director at any international financial institution to “vote in favor of the provision of assistance for Burma by the institution, notwithstanding any other provision of law” if the President has determined to do so is in the national interest of the United States. Written notice of such a determination is to be provided to “the Committees on Foreign Relations, Banking, Housing, and Urban Affairs, and Appropriations of the Senate, and the Committees on Financial Services, Foreign Affairs, and Appropriations of the House of Representatives.” In addition, prior to the President making such a determination, “the Secretary of State and the Secretary of the Treasury each shall consult with the appropriate congressional committees on assistance to be provided to Burma by an international financial institution, and the national interests served by such assistance.”

In addition to the five bills that became law, the 112th Congress introduced over 20 bills pertaining to Burma to varying degrees. Most did not see further action after referral to the committees with jurisdiction. H.Con.Res. 135 was approved by both the House and the Senate, authorizing the use of the Capitol’s rotunda for the presentation of the Congressional Gold Medal to Aung San Suu Kyi on September 19, 2012.

The six congressional hearings on Burma held during the 112th Congress were equally divided between the House Committee on Foreign Affairs (HFAC) and the Senate Committee on Foreign Relations (SFRC). HFAC held a full committee hearing entitled, “Religious Freedom, Democracy, Human Rights in Asia: Status of Implementation of the Tibetan Policy Act, Block Burmese JADE Act, and North Korean Human Rights Act,” on June 2, 2011. Its Subcommittee on Asia and the Pacific held a hearing, “Piercing Burma’s Veil of Secrecy: The Truth Behind the Sham Election and the Difficult Road Ahead,” on June 22, 2011. The same subcommittee held a hearing entitled, “Oversight of U.S. Policy Toward Burma,” on April 25, 2012.

Two of the three Senate hearings related to Burma were nomination hearings, both for the same person, Derek J. Mitchell. SFRC held a hearing on Mitchell’s nomination to serve as the first Special Representative and Policy Coordinator for Burma on June 29, 2011, and a hearing for Mitchell’s nomination as Ambassador to Burma on June 27, 2012. The third SFRC hearing was held by the Subcommittee on East Asia and Pacific Affairs on April 26, 2012, with the title of “U.S. Policy on Burma.”

⁷² Section 140 of the P.L. 112-33 and the P.L. 112-36 extended the import ban for the same time period, July 26, 2011, to July 25, 2012; Section 3 of P.L. 112-163 extended the import ban from July 26, 2012, to July 25, 2013, as well as extended the eligible renewal period for an additional three years to July 25, 2015.

Options for the 113th Congress

The 113th Congress has several different aspects of U.S. policy towards Burma that it may choose to consider. In its oversight capacity, Congress may decide to investigate and assess the Obama Administration's general approach to relations with Burma, as well as consider the degree to which the Administration is fully and faithfully implementing the existing laws that delineate U.S. policy towards Burma. Congress may also take up legislation—either of its own volition or at the request of the Obama Administration—to adjust U.S. policy in light of the changing circumstances in Burma. In addition, Congress will have the opportunity to examine Administration requests for funding various assistance programs and initiatives in Burma, and appropriate what Congress determines is a suitable amount.

Assessing U.S. Policy

Congressional oversight of the executive branch's administration and implementation of federal laws is long-standing authority implicit in the U.S. Constitution.⁷³ The House Committee on Foreign Affairs and the Senate Committee on Foreign Relations utilized their oversight authority to request the testimony of senior Administration officials for separate hearings on U.S. policy towards Burma in April 2012 (see above). The 113th Congress may choose to hold similar hearings or request information by other means and mechanisms given the developments in Burma since these two hearings were held. Such oversight activities may examine the Obama Administration's general approach to relations with Burma and/or the implementation of existing laws that specify details in U.S. policy towards Burma.

General Approach

The 113th Congress may consider examining the reasoning behind the shift in the Administration's approach to Burma described in this report, and, if it chooses, convey its assessment of the conduct of U.S. policy in Burma. Among the key aspects of current U.S. policy Congress may decide to consider are:

- To what extent has the political situation in Burma changed over the last two years, and to what extent might it change over the next two years?
- Has the Obama Administration moved too quickly or too slowly in easing sanctions on Burma?
- Is the Obama Administration overly focused on President Thein Sein and other Burmese officials in the Union Government damaging relations with the Union Parliament, opposition political parties, and ethnic organizations?
- Does the Obama Administration formally accept the Union Government and the Union Parliament as the legitimate government in Burma? Does it accept the legitimacy of the 2008 Constitution?
- Should the U.S. government return to a reactive, "action for action" approach to Burma, or should it continue to be more proactive, and take steps to try to foster further reforms, as the Obama Administration appears to have done since April 2012?
- What is the Obama Administration's assessment of the attitudes of the Burmese military to political reform in Burma, and what does it consider the best approach

⁷³ For details, see CRS Report 97-936, *Congressional Oversight*, by L. Elaine Halchin and Frederick M. Kaiser.

- to dealing with the Burmese military in the future? Under what circumstances should the U.S. Government consider reestablishing military-to-military relations?
- How does the Obama Administration view the various ethnic groups, and their associated militias? Should the U.S. Government establish closer and open relations with the ethnic organizations?

Specific Issues and Implementation

Beyond the possibility of examining the general framework of U.S. policy towards Burma, Congress may also contemplate pursuing a number of specific issues related to U.S. policy, including the Obama Administration's implementation of the existing laws specifying aspects of U.S. policy. One issue is the Administration's intentions with respect to the Special Representative and Policy Coordinator for Burma. Another issue is the administration of the lists maintained by the Secretaries of State and the Treasury of Burmese nationals subject to political and economic sanctions. A third issue is the timely submission of legally required reports to Congress, and the accuracy and comprehensiveness of those reports.

Section 7 of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008, or 2008 JADE Act, requires that the President appoint a Special Representative and Policy Coordinator for Burma, "by and with the advice and consent of the Senate." It further stipulates that the Special Representative "shall have the rank of ambassador," and:

Except for the position of United States Ambassador to the Association of Southeast Asian Nations [ASEAN], the Special Representative and Policy Coordinator may not simultaneously hold a separate position within the executive branch, including the Assistant Secretary of State, the Deputy Assistant Secretary of State, the United States Ambassador to Burma, or the Charge d'affairs to Burma.

Ambassador Derek J. Mitchell was confirmed by the Senate as Special Representative and Policy Coordinator for Burma on August 2, 2011, but stood down from the position after his confirmation as U.S. Ambassador to Burma on June 29, 2012. Deputy Special Representative and Policy Coordinator for Burma W. Patrick Murphy was appointed as acting Special Representative and Policy Coordinator for Burma on July 23, 2012, according to the State Department's webpage.

The Federal Vacancies Act of 1998 (P.L. 105-277) allows for temporary appointments for positions requiring the advice and consent of the Senate no more than 210 days in most circumstances.⁷⁴ The time restriction is suspended if a first or second nomination for the position is pending in the Senate. Given the date posted by the State Department, Murphy's temporary appointment has exceeded the 210 day limit. Congress may consider asking the Obama Administration about its intentions with respect to nominating someone to serve as Special Representative and Policy Coordinator for Burma.

Another aspect of implementation that has drawn criticism is the compilation of lists of Burmese persons—people and legal entities—subject to sanctions as required by existing laws. Three laws—Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Section 570) (P.L. 104-208); the Burmese Freedom and Democracy Act of 2003 (2003 BFDA) (P.L. 108-61); and the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Tom Lantos Block Burmese JADE Act) (P.L. 110-286)—

⁷⁴ For more details, see CRS Report RS21412, *Temporarily Filling Presidentially Appointed, Senate-Confirmed Positions*, by Henry B. Hogue.

prohibit the issuance of a entry visa to a variety of Burmese nationals based on differing criteria, unless the President determines that providing a visa is in the national interest of the United States. In addition, various presidential determinations and executive orders (EOs) (including EO 13169, issued by President Obama on Jul 11, 2012) include provisions blocking the issuance of visas to selected Burmese nationals. The Department of State has the responsibility to compile and maintain the list of Burmese nationals prohibited from receiving entry visas. In addition, the 2003 BFDA and the Tom Lantos Block Burmese JADE Act freeze the assets of certain Burmese persons held by a U.S. person or that enters the United States, and the Tom Lantos Block Burmese JADE Act bans the provision of financial services to individuals subject to a visa ban under this law. Both financial sanctions are to be administered by the Secretary of the Treasury, in accordance with the relevant laws and presidential EOs. Section 5(d)(4) of the Tom Lantos Block Burmese JADE Act requires the Secretaries of State and the Treasury to “devote sufficient resources to the identification of information concerning potential persons to be sanctions to carry out the purposes described in this Act.”

A number of human rights and Burmese solidarity organizations have criticized the Departments of State and the Treasury for failing to enforce the visa ban and financial sanctions to the full extent of the law. The State Department has not revealed publicly the names on its visa ban list, making it difficult to determine if it is fully compliant with the law. During the last two years, a number of Burmese government officials have visited the United States, including persons that would appear to be subject to the sanctions in Section 570, the 2003 BFDA, and/or the Tom Lantos Block Burmese JADE Act. It is not known if the required written presidential determination to Congress that the visit of these people was in the national interest of the United States was provided. The Treasury Department has delegated the responsibility of maintaining the list of Burmese persons subject to financial sanctions to its Office of Foreign Assets Control (OFAC), which posts the designated Burmese persons as part of its Specially Designated Nationals (SDN) list, which is a compilation of all individuals, groups, companies, or entities identified as being subject to sanctions administered by the Department of the Treasury.⁷⁵ According to the human rights and Burmese solidarity organizations, the current SDN list does not include dozens of Burmese nationals and companies that meet the conditions specified in the relevant laws.

A third aspect of implementation that has drawn some criticism is related to the delivery and quality of congressionally mandated reports to be provided by the executive branch to Congress or designated congressional committees. Appendix C presents in tabular form a list of required reports to Congress contained in Burmese sanction laws. Not all of the required reports have been delivered to Congress by the stipulated deadline. In some cases—particularly the reports on global sources of military assistance and intelligence to Burma, and a report on “all countries and foreign banking institutions that hold assets on behalf of senior Burmese officials”—the information provided to Congress reportedly was less than comprehensive and lacking in detail.

Legislation

With one important exception, the existing sanctions on Burma remain in effect either until certain conditions have been met or Congress acts to terminate or remove the sanctions. The general import ban specified in Section 3(a) of the 2003 BFDA is subject to annual renewal by Congress. To date, President Obama has used existing authority to waive or ease some of the sanctions on Burma, but the underlying authority to impose the sanctions remains in effect. As

⁷⁵ Available online at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

such, the imposition of the waived sanctions can be resumed at any time if the President decides to remove the waiver.

The current extension of the general import ban in Section 3(a) of the 2003 BFDA ends on July 25, 2013. On November 15, 2012, the State Department released a determination that a waiver of the Section 3(a) import ban was in the national interest of the United States. The 113th Congress may consider if it should extend the Section 3(a) import ban, given the current presidential waiver.

In addition, either in response to a request from the White House or based on its own assessment, the 113th Congress may consider legislation to alter or amend current U.S. policy towards Burma, including imposing or re-imposing existing sanctions on Burma (for example, by superseding a presidential waiver), or revoking or removing one of the sanctions. Congress may also contemplate altering, modifying, and/or clarifying the necessary conditions for the President to determine that selected sanctions can be terminated. In addition, Congress may choose to provide guidance or instruction over the manner in which to conduct U.S. policy towards Burma.

Appropriations

Besides the possibility of taking up policy-related legislation, the 113th Congress will have an opportunity to consider funding levels for the various assistance programs and other activities in Burma proposed by the Obama Administration. Both President Obama and then Secretary of State Clinton made a number of commitments to the Union Government to provide assistance in several different areas, including aid to landmine victims, funding for English language training and academic exchange programs, and programs to foster democracy and better governance. The Obama Administration also decided to reopen the USAID mission in Rangoon, and has plans to expand its staffing and operations. These activities will require additional federal funding to be carried out.

The amount of funding available for the programs in Burma is likely to be affected by sequestration and other budget constraints. The Budget Control Act of 2011 (P.L. 112-25), as amended by the American Taxpayer Relief Act of 2012 (P.L. 112-240), requires an across-the-board reduction of about 5% of the annualized funding in the FY2013 continuing resolution (P.L. 112-175), according to the Office of Management and Budget (OMB).⁷⁶ After Congress passes FY2013 funding legislation for the remainder of the fiscal year, OMB will re-calculate the across-the-board cuts. Sequestration does allow the Department of State and USAID the authority to reprogram funds, subject to regular notification procedures.

Given uncertainty over the country allocations that would be used as the baseline to calculate the sequestration, it is not possible to calculate post-sequestration funding levels for Burma. A possible rough estimate, however, might be determined by reducing FY2012 estimates by 5%. Once Congress passes final FY2013 funding legislation, the Department of State can then determine the country and program allocations including reprogramming in order to calculate sequestration at the country level.

Looking Forward

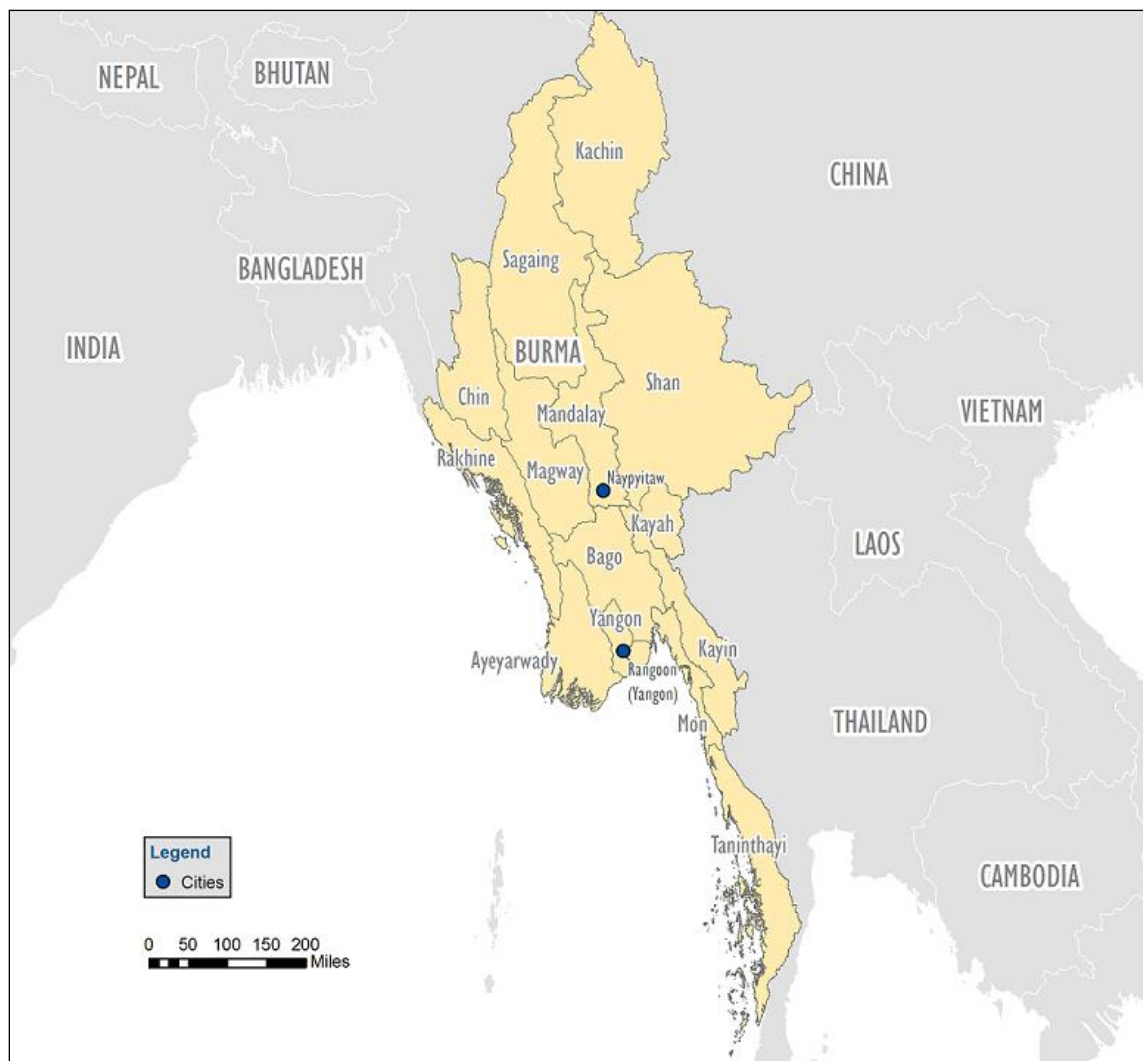
If the past two years are a reliable indicator, Burma will continue to undergo significant political and economic changes over the next three years leading up to its 2015 parliamentary elections.

⁷⁶ The Office of Management and Budget, *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013*, March 1, 2013. http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjsequestrationreport.pdf

While domestic forces are most likely to be the major factors determining the path of Burma's future, U.S. policy may play a role in influencing the choices made by Burma's leaders and its people. The 113th Congress may, if it so decides, take an active role in the determination and conduct of U.S. policy towards Burma during this potentially critical period in the nation's possible transition to a civilian democratic government based on the rule of law and the protection of basic human rights.

Appendix A. Map of Burma

(including Regions, States, and Major Cities)



Source: CRS.

Note: Burma is administratively divided into seven States—Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shan—and seven Regions—Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Taninthayi, and Yangon.

Appendix B. Chronology of Major Events in Burma and Developments in U.S. Policy

The table below provides a chronological summary of the major events in Burma, as well as developments in U.S. policy towards Burma, since the Obama Administration announced a new approach to relations with Burma.

Chronology: September 2009 to Present

| Month | Major Event in Burma | Major Development in U.S. Policy |
|----------------|--|--|
| September 2009 | SPDC releases over 7,000 prisoners, including 128 political prisoners Burmese Army ends offensive against Kokang militia, the Myanmar National Democracy Alliance Army (MNDAA) | State Department announced new approach to U.S. policy in Burma |
| October 2009 | Several ethnic parties announce they will boycott November elections Deadline for ethnic militias to agree to become border guard forces (BGF) passes with most refusing to comply; deadline extended | |
| November 2009 | | Assistant Secretary Kurt Campbell and Deputy Assistant Secretary Scott Marciel traveled to Burma to meet with SPDC Prime Minister Thein Sein Thein Sein and President Obama meet during 1 st US-ASEAN leaders meeting in Singapore |
| December 2009 | | |
| January 2010 | SPDC announces plan to privatize all state-owned enterprises | |
| February 2010 | | |
| March 2010 | SPDC announces laws governing November parliamentary elections NLD announces it will boycott November parliamentary elections | |
| April 2010 | USDA registers as political party, Union Solidarity and Development Party (USDP), with Thein Sein as party leader | |
| May 2010 | | |
| June 2010 | <i>Democratic Voice of Burma</i> releases report and documentary claiming SPDC has active nuclear weapon and ballistic missile programs | |
| July 2010 | USDA dissolved; assets transferred to USDP | Congress renews for another year BFDA ban on import of products of Burmese origin |
| August 2010 | Union Election Commission (UEC) announces election date—November 7, 2010 | |

| Month | Major Event in Burma | Major Development in U.S. Policy |
|----------------|--|--|
| September 2010 | UEC allows 37 parties to participate in election; denies registration for several ethnic parties | |
| October 2010 | SPDC announce new national flag, state seal, and national anthem Cyclone Giri strikes Rakhine State causing extensive damage | |
| November 2010 | Parliamentary elections held; USDP wins majority of seats Aung San Suu Kyi released from house arrest Burmese Army steps up attacks on Democratic Karen Buddhist Army and Shan State Army-North | |
| December 2010 | | |
| January 2011 | Union Parliament sworn into office Shwe Mann chosen as speaker for lower house; Khin Aung Myint chosen as speaker for upper house | |
| February 2011 | Thein Sein elected President by Union Parliament; Sai Mauk Kham and Tin Aung Myint Oo chosen as Vice Presidents | |
| March 2011 | SPDC transfer power to Union Government President Thein Sein appoints cabinet ministers, UEC members, Supreme Court judges, and Constitutional Tribunal General Min Aung Hlaing appointed Commander-in-Chief of Burmese military | |
| April 2011 | | |
| May 2011 | 1 st major prisoner amnesty announced | |
| June 2011 | | |
| July 2011 | | Congress renews for another year BFDA ban on import of products of Burmese origin |
| August 2011 | | Derek Mitchell confirmed by Senate as Special Representative to Burma |
| September 2011 | Myanmar National Human Rights Commission created President Thein Sein suspends Myitsone dam project in Sagaing Region | Special Representative Mitchell travels to Burma for the first time |
| October 2011 | 2 nd major prisoner amnesty announced Labour Organization Law enacted IMF delegation travels to Burma | |
| November 2011 | NLD agree to participate in parliamentary by-election ASEAN agrees to appoint Burma as ASEAN chair for 2014 | President Obama announces Secretary Clinton will travel to Burma President Obama and President Thein Sein meet during 3 rd US-ASEAN leaders meeting in Bali, Indonesia |

| Month | Major Event in Burma | Major Development in U.S. Policy |
|---------------|---|---|
| December 2011 | President Thein Sein instructs Commander-in-Chief General Min Aung Hlaing to order military to cease its attacks on the KIA Law Relating to Peaceful Assembly and Peaceful Procession enacted UEC announce date of parliamentary by-elections—April 1, 2012 | Secretary Clinton visits Burma |
| January 2012 | 3 rd & 4 th major prisoner amnesties announced Norway lifts economic sanctions on Burma | |
| February 2012 | European Union (EU) announces €150 million aid package | President Obama waives TVPA restriction on IFI assistance to Burma |
| March 2012 | | |
| April 2012 | Parliamentary by-elections held; NLD win 43 out of 45 seats Australia & EU lift most sanctions on Burma EU opens representative office in Burma | Secretary Clinton announces “five steps” to support reforms in Burma OFAC announces General License No. 14-C, facilitating humanitarian assistance to Burma |
| May 2012 | Vice President Tin Aung Myint Oo resigns President Thein Sein reorganizes negotiating team for ceasefire talks with ethnic militias Foreign Minister Wunna Maung Lwin visits Washington, DC. | President Obama renews “national emergency” with respect to Burma for another year Special Representative Mitchell nominated to serve as U.S. ambassador to Burma |
| June 2012 | Ethnic-based rioting breaks out in Rakhine State; dozens killed, thousands of people displaced Burma’s censorship board, the Press Scrutiny and Registration Division (PSRD) warns publications about reports on unrest in Rakhine State | |
| July 2012 | 5 th major prisoner amnesty announced | Ambassador Mitchell presents credentials to President Thein Sein, assumes post as U.S. Ambassador to Burma Bans on new investments in Burma and the provision of financial services to Burma waived OFAC releases General License No. 16 (authorizing the provision of financial services to Burma) and General License No. 17 (authorizing new investment in Burma) Presidential Executive Order 13619 released adding new sanctions on certain Burmese nationals |
| August 2012 | President Thein Sein reshuffles cabinet Vice Admiral Nyan Tun chosen as Vice President (replacing Tin Aung Myint Oo) Burma’s Ministry of Information stops pre-release censorship for all publications | |

| Month | Major Event in Burma | Major Development in U.S. Policy |
|----------------|---|--|
| September 2012 | Constitutional Tribunal resigns President Thein Sein and Aung San Suu Kyi travel separately to Washington, DC. | P.L. 112-192 signed into law, granting the President authority to waive BDFA restrictions on IFI assistance to Burma |
| October 2012 | Two-day Burma-U.S. human rights dialogue held in Naypyidaw Ethnic riots in Rakhine State re-erupt, over a dozen people killed | BFDA restrictions on IFI assistance to Burma waived |
| November 2012 | New Foreign Investment Law enacted President Thein Sein pardons 452 prisoners, but none considered political prisoners Burmese government promises to take various actions, including U.N. Security Council Resolution No. 187, signing the Additional Protocol to the IAEA Comprehensive Safeguards Agreements, agreeing to the U.S.-Myanmar Joint Plan on Trafficking in Persons, and implementing ILO Action Plan on Forced Labor Burmese police attack monks and civilians protesting copper mine near the city of Mongya in Sagaing Region, injuring over 50 people | Ban on import of goods of Burmese origin waived President Obama visits Burma |
| December 2012 | Burmese Army launches Operation Thunderbolt against KIO/KIA | |
| January 2013 | Union Parliament formally dissolved PSRD President Thein Sein abolishes Order No. 2/88, which banned unauthorized gatherings of five people or more | |
| February 2013 | Union Government and KIO/KIA hold first round of ceasefire talks in Ruili, China | OFAC issues General License No. 19, waiving restrictions on four Burmese banks |
| March 2013 | Ministry of Information submits Press Law to Union Parliament | |

Source: CRS.

Appendix C. Required Reports to Congress on Burma

Various laws require or request the executive branch to submit reports to Congress or designated congressional committees on different topics related to Burma. The following table provides a list of these reports, the relevant law, which agency or agencies is/are responsible for submitting the report, to whom they are to be submitted, the frequency of the reporting requirement, the deadline for submission, and the mode of delivery.

Table C-1. Required Reports to Congress on U.S. Policy Towards Burma

| Type of Report | Law | Agency | Recipient | Frequency | Deadlines | Delivery |
|--|------------------|--|--|---|--|------------------------|
| List of sanctioned officials – “former and present leaders of SPDC, the Burmese military, or the USDA;” officials of the SPDC, Burmese military, or the USDA; “other Burmese persons who provide substantial economic support for the SPDC, Burmese military, or USDA;” immediate family members of the preceding people | 2008 JADE Act | President | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Ways & Means Committee; Senate Finance Committee | Updates as new information is available | 1 st report due 120 days after enactment | Transmit to committees |
| Report on “short- and long-term programs and activities to support democracy activists in Burma” | 2003 BFDA | Secretary of State | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Appropriations Committee; Senate Appropriations Committee | One time | Three (3) months after enactment | Transmit to committees |
| “Report on Resources” —“report on resources that will be necessary for the reconstruction of Burma, after the SPDC is removed from power” | 2003 BFDA | Secretary of State | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Appropriations Committee; Senate Appropriations Committee | One time | Six (6) months after enactment | Transmit to committees |
| Report on Trade Sanctions | 2003 BFDA | Secretary of State, in consultation with USTR and appropriate agencies | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Ways & Means Committee; Senate Finance Committee | One time | No later than 90 days before trade sanctions are to expire | Transmit to committees |

| Type of Report | Law | Agency | Recipient | Frequency | Deadlines | Delivery |
|--|---------------|---|---|---|---|--|
| Report on implementation of jadeite and ruby ban | 2008 JADE Act | President | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Ways & Means Committee; Senate Finance Committee | Update when there are “subsequent developments” | No later than 180 days after enactment | Transmit to committees |
| Report on effectiveness of jadeite and ruby ban | 2008 JADE Act | GAO | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Ways & Means Committee; Senate Finance Committee | One time | No later than 14 months after enactment | Transmit to committees |
| Report on military and intelligence aid to Burma—list of countries, companies, and other entities that provide military and intelligence aid to the SPDC | 2008 JADE Act | Secretary of State | House Foreign Affairs Committee; Senate Foreign Relations Committee | Annually | No later than 180 days after enactment | Transmit to committees; unclassified but parts may be classified |
| Report on Burma’s timber trade | 2008 JADE Act | Secretary of State, in consultation with Secretary of Commerce and other agencies | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Ways & Means Committee; Senate Finance Committee | Annually | One (1) year after enactment | Transmit to committees |

| Type of Report | Law | Agency | Recipient | Frequency | Deadlines | Delivery |
|--|---------------|--|--|-----------|--|--|
| Report on financial assets held by members of SPDC—list of “all countries and foreign banking institutions that hold assets on behalf of senior Burmese officials” | 2008 JADE Act | Secretary of Treasury, in consultation with Secretary of State | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Ways & Means Committee; Senate Finance Committee; also, posted on Treasury’s webpage no later than 30 days after submission to committees | Annually | No later than 180 days after enactment | Transmit to committees; unclassified, but part may be classified; Treasury’s webpage |
| Report on safety of 15 plaintiffs in Doe v. Unocal case in Thailand | 2008 JADE Act | President | House Foreign Affairs Committee; Senate Foreign Relations Committee; House Ways & Means Committee; Senate Finance Committee | One time | No later than 90 days after enactment | Transmit to committees |

Source: CRS research.

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